5-4-1984

Joint Hearing of the Senate and Assembly Judiciary Committees on Proposition 24 (Pursuant to Elections Code Section 3523.1)

Assembly Committee on Judiciary

Senate Committee on Judiciary

SENATE AND ASSEMBLY COMMITTEES ON JUDICIARY

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Hearing of May 4, 1984
Room 1138
Department of General Services
107 South Broadway
Los Angeles, California

Assembly Members

Elihu M. Harris, Chairman
Lloyd Connelly, Vice Chairman
Charles Calderon
Terry Goggin
Ross Johnson
Pat Johnston
Bill Lancaster
Alister McAlister
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Rubin R. Lopez, Chief Counsel
Ray LeBov, Counsel
Mark Harris, Counsel

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Senate Office of Research

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84-6-104

ELECTIONS CODE SECTION 3523.1:

Upon the certification of an initiative measure for the ballot, the Secretary of State shall transmit copies of the initiative measure, together with the ballot title as prepared by the Attorney General pursuant to Section 3530, to the Senate and Assembly. Each house shall assign the initiative measure to its appropriate committees. The appropriate committees shall hold joint public hearings on the subject of such measure prior to the date of the election at which the measure is to be voted upon; provided, that no such hearing may be held within 30 days prior to the date of the election.

Nothing in this section shall be construed as authority for the Legislature to alter the initiative measure or prevent it from appearing on the ballot.

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SENATE AND ASSEMBLY JUDICIARY COMMITTEE
"GANN INITIATIVE"
May 4, 1984
Los Angeles, California

CHAIRMAN BARRY KEENE: Good morning ladies and gentlemen. I am Senator Barry Keene from the North Bay and North Coast portion of California. I am happy to be here, and I would like to welcome you to this joint hearing of the Senate and the Assembly Judiciary Committees, which will be taking testimony on Proposition 24, the so-called Gann Initiative or Legislative Reform Act of 1983.

To my immediate left is the Chairman of the Assembly Judiciary Committee, Assemblyman Elihu Harris, and he will have some introductions to make and perhaps something to say in just a moment.

I appreciate your braving the morning Los Angeles traffic to be here. Some of you have come from distant places, and I hope that we can offer you sufficient rewards of information and enlightenment. There will be additional members of the Senate as well as probably the Assembly joining us shortly who will be introduced when they arrive.

I should point out that the meeting is convened pursuant to Elections Code Section 3523.1, which requires without regard to legislative business in Sacramento and the pressure of that business, that the appropriate committees of both houses hold public hearings on any initiative that qualifies for the ballot.

Before we call our first witness and before I call upon Chairman Harris to introduce the members of the Assembly, I would like to invoke your contemplative natures by reading a passage edited as to language, but not as to meaning, that James Madison wrote for the Federalist Papers, and that I think is particularly relevant to the matters that we will be considering. What he said was:

> Thoughtful and honest people are aware that any human blessings have a portion of alloy in them -- a risk to be taken or a price to be paid. The choice is sometimes among the lesser of evils, but more often among the greater of goods. But there is rarely a chance to choose a perfect good. And if you vest any kind of power in a political institution, it involves the risk that if exercised, it can be

> abused or misapplied. So thefirst question to be faced is whether the power to be conferred is actually necessary to the public good. If it is, the remedy is not to eliminate or limit necessary power, but to vigilantly guard against any perversion of that power to the detriment of the public.

I thought that might be an interesting way to begin. Chairman Harris.

CHAIRMAN ELIHU M. HARRIS: Thank you. I would just like to say that the main purpose of this hearing is to establish a record. The proposition that the voters will be confronted with in June is of great importance in terms of its impact on the body politic and certainly on the decision-making process in the public sector, and we take it seriously. What we want to do is make sure that we have the best possible input that would indicate both its impact and its legality and anything else that should be made known to the public as they consider this initiative on the June ballot.

We have with us members of the Assembly Judiciary Committee and other Assembly members who have an important contribution to make and important responsibilities as related to the potentialities of this Gann Initiative. Joining us from the Assembly is the Vice-Chair of the Assembly Judiciary Committee, Lloyd Connelly, Assemblyman Patrick Johnston, Assembly Republican Leader Bob Naylor, Assemblyman Richard Mountjoy, as well as Assemblyman Chuck Calderon.

CHAIRMAN KEENE: Thank you. Bion Gregory is our first witness. He is the Legislative Counsel of California, a graduate of Stanford University and the Hastings College of the Law. He served as a Deputy Legislative Counsel from 1968 to 1970. From 1971 to 1976, he was the Chief Counsel to the Senate Committee on the Judiciary. He has served as Legislative Counsel since 1976 and is currently a member of the California Law Revision Commission and the California Commission on Uniform State Laws. Mr. Gregory.

Before you begin, I should point out that we discovered only yesterday some serious shortcomings in the public address system. We asked if there were adequate microphones. We were told that there were more than enough adequate microphones, but we were not told, because we did not ask the further question if they were working; only four were working. So, we have four microphones to share among us, and it might behoove those of you in the back to move forward so you can hear us because I am not sure we will be successful in passing around microphones all morning in a manner such that you will be able to pick up everything. So, I will make that suggestion to you now, if you care to do that. We will begin with the hopes that the witness microphone is working.

UNIDENTIFIED VOICE: (Inaudible)...

MR. BION M. GREGORY: Thank you, Mr. Chairman and members. I am appearing today at the request of the committee for the purpose of identifying the changes in practices and procedures of the Legislature that would occur if Proposition 24 is adopted by the people at the June, 1984 Direct Primary and is fully implemented.

The measure would repeal a number of provisions of existing law relating to legislative committees, procedures, officers, and funding and would substitute, therefor, provisions entitled the "Legislative Reform Act of 1983" dealing with the same subject matter. I will discuss first the changes proposed by the new chapter and then identify those few provisions which would be repealed by the measure but would not be clearly replaced or superseded.

Section 9900 titles the new chapter. Section 9901 alleges certain findings and declarations concerning existing legislative practices and procedures, and Section 9902 states the purported purposes for the enactment of the chapter. Section 9903 would require that the chapter be liberally construed to accomplish its purposes.

Section 9904 would permit the provisions of the new chapter to be amended only by compliance with the procedures stated therein. Specifically, subdivision (a) would provide the chapter may be amended only to further its purposes, only by statute, passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring and signed by the Governor. And only if at least 20 days prior to passage in each house, the bill, in its final form, has been printed and made available for public inspection. Alternatively, under subdivision (b), the chapter may be amended or repealed by a statute that becomes effective only when approved by the electors. If any act of the Legislature conflicts with the provision of the new chapter, the latter would prevail.

These provisions are in stark contrast to existing law, under which each house is generally authorized to adopt, amend, and repeal, by house resolution, rules relating to its internal procedures, including the choosing of its officers and the selection of committees. In addition, the California Constitution specifically empowers the two houses together to provide by concurrent resolution, adopted by a two-thirds vote of the members of each house, with regard to the extent to which its proceedings are to be public. These resolutions supersede any prior statutes with which they conflict. Finally, where the Legislature elects to set forth its rules of procedure in a statute, there is no present requirement that the statute be adopted by any more than a majority vote.

CHAIRMAN KEENE: Yes, Mr. Naylor.

ASSEMBLYMAN ROBERT NAYLOR: Isn't it true that these amendment provisions in Prop 24 are the same as those in the Political Reform Act, which has been amended inumerable times during my brief tenure in the Legislature?

MR. GREGORY: That is correct. These are identical to those in the Political Reform Act. But the Political Reform Act, unlike what this seeks to govern is a statutory body of law unlike the rules of the houses, which this deals with.

ASSEMBLYMAN NAYLOR: Well, how do you distinguish between the statutory body of law and the rules of the house?

MR. GREGORY: Well, the rules of the house generally govern the internal operations of either or both houses of the Legislature, whereas the Political Reform Act is a comprehensive act that governs a variety of subjects including conflict of interest, campaign, exposure of campaign contributions, reporting requirements, a variety of conduct that evolves around elected officials and their campaigns which imposes duties on individuals other than elected officials.

ASSEMBLYMAN NAYLOR: Isn't it true that this initiative amends a lot of statutory laws governing the conduct of the Legislature -- that is, establishing committees and so on?

MR. GREGORY: It amends provisions of law that are located in the Government Code, which formerly were in the Political Code prior to the adoption of the Government Code in the 1940's. Whether or not those provisions can be construed as statutes or merely rules of the house, I think is another issue.

ASSEMBLYMAN NAYLOR: They were adopted as statutes though, right? I mean they were passed by both houses and signed by the Governor?

MR. GREGORY: At the time of the initial adoption, yes.

ASSEMBLYMAN NAYLOR: Right.

MR. GREGORY: Article 2 delineates various legislative powers and duties. Section 9910 continues existing law insofar as it makes the Speaker of the Assembly responsible for the efficient conduct of the legislative and administrative affairs of the Assembly and provides for the election of the Speaker at the commencement of the session. However, as I will point out in connection with the discussion of the powers of the Assembly Rules Committee, the powers of the Speaker to accomplish the task would be curtailed by the proposition.

Section 9911 provides in part:

> There is hereby created in the Assembly a Committee on Rules, which shall consist

> of the Speaker, who shall be chairman, six other members of the Assembly, three to be elected by the party having the largest number of members in the Assembly and three to be elected by the party having the second largest number of members.

Under present Assembly Rule 13, the Assembly Rules Committee consists of a member appointed by the Speaker, who is also the Chairman, the Majority Floor Leader, the Minority Floor Leader, and six other members, three of whom are members of the majority party, and three of whom are members of the minority party. These six members are selected by their respective party caucuses but must then be approved by a vote of 41 or more members of the Assembly. In addition, unless otherwise elected or appointed as a member, under existing provisions, the Speaker, Speaker pro Tempore, Majority Party Caucus Chairman and Minority Party Caucus Chairman are ex-officio members of the Rules Committee with all rights of membership except the right to vote.

Also, because Section 9911 specifically limits membership on the Rules Committee to members of either the majority party or the party with the second number of members, a member of any other party or a member who is not a member of any party would be barred from serving on the committee.

To summarize, under Section 9911, the Assembly Rules Committee would consist of seven, rather than nine, members. The Speaker would serve as the chairman of the committee, and the membership of the Assembly would have no power to reject the selections for membership.

Subdivision (a) of Section 9912 would prescribe the powers of the Assembly Rules Committee. In this regard, Section 9912 would authorize the Rules Committee to appoint the chairman and vice chairman of all other Assembly committees, would require that the chairman and vice chairman of each committee be members of different parties, and would give the Rules Committee general direction over the Assembly Chamber and rooms set aside, including private offices, for the use of the Assembly and its members. Under present procedures, the Speaker appoints the chairman and vice chairman of Assembly committees and is not required to appoint members from different parties. And the Speaker has general direction over the Assembly Chamber and rooms set aside for use of the Assembly and its members.

Section 9912 continues the general authority of the Rules Committee to allocate funds, staffing, and other resources for the operation of the Assembly, but further provides that:

> Except as otherwise provided by affirmative recorded vote of two-thirds of the total membership of

> the committee, all funds, staffing and resources shall be allocated proportionately by the party.

This provision has no counterpart in existing law.

Subdivision (b) of Section 9912 would restrict the ability of the Rules Committee to delegate its administrative powers to its chairman, chief administrative officer, or other agent. Specifically, it would provide:

> Notwithstanding any other provision of law or rules, neither the Chairman nor any member or agent of the Assembly Committee on Rules shall have the power to perform any action on behalf of the committee, including, but not limited to, the making of contracts, the payment of claims, the allocation of office space, or the hiring or dismissal of staff, without the express authorization of two-thirds of the total members of the committee. Such authorization shall apply only to matters or matters under immediate consideration.

This provision would reverse the practice formerly adopted by the Assembly Rules Committee pursuant to Assembly Rules Committee Resolution No. 82-1 of March 1, 1982, which provides:

> That it hereby reaffirms the long-standing custom and practice for the chairman of the Committees on Rules, in the absence of any formal action by the committee, to exercise the authority, perform the duties, and assume the responsibilities of the committee in relation to the assignment of offices and desks, the appointment of attaches and employees of the Assembly, the execution and administration of contracts, and the performance of other similar administrative duties.

Section 9913 is an entirely new provision that makes all statutory appointments delegated to the Speaker of the Assembly subject to confirmation by a two-thirds vote of the Assembly Rules Committee.

Under existing law, the Speaker has the statutory power to make appointments to various boards and commissions. This proposition does not contain a comparable provision with respect to appointments made by the Senate Rules Committee.

Section 9914, relating to the President pro Tempore of the Senate, is comparable to Section 9910, which relates to to the Speaker and in general continues existing law with respect to the election of the President pro Tempore and makes the President pro Tempore responsible for the efficient conduct of the legislative and administrative affairs of the Senate.

Section 9915 leaves the present size of the Senate Rules Committee unchanged. The composition of the Rules Committee would be specified as the President pro Tempore, who would be the Chairman, two members selected by the majority party and two members selected by the party with the second largest number of members. Present rules name the President pro Tempore Chairman of the committee, but the other four members of the committee are elected by the entire Senate. Also, like the Assembly Rules Committee, a member of any party other than the two largest or a member who is not a member of any party would be barred from serving on the committee.

Section 9916 prescribes the same powers and limitations on these powers, for the Senate Rules Committee, as Section 9912 prescribes for the Assembly Rules Committee. The changes from current practice are not quite as great here because the Senate Rules Committee presently appoints the chairman and vice chairman of the standing committees of the Senate and has general direction over the facilities of the Senate. However, Section 9916 provides the same requirement of proportionate allocation of resources and the same restriction on the delegation of powers as with Section 9912.

The latter restriction would be contrary to the existing practice, and the former requirement has no counterpart in existing law.

Under Section 9917, the Joint Rules Committee would be comprised of the combined membership of the Assembly Rules Committee and the Senate Rules Committee, plus two other Senators, one to be elected by the party having the largest number of members in the Senate and one to be elected by the party having the second largest number of members. By comparison, the Joint Rules Committee now exists of nine members of the Assembly Committee on Rules, the Speaker of the Assembly, four members of the Senate Committee on Rules, and six members of the Senate to be appointed by the Senate Committee on Rules.

As may be seen, the Joint Rules Committee would be reduced in size from 20 members to 14, and the membership from each house would be split 4-3 with only the two largest parties from each house being represented on the committee.

Section 9917 would require any action which involves or anticipates the expenditure or allocation of funds to be approved by an affirmative vote of at least two-thirds of the Senate members and two-thirds of the Assembly members. This requirement

is imposed even though the funds may be allocated on a proportional basis between the parties. Similarly, Section 9917 would prohibit the chairman or any member or agent of the Joint Rules Committee from performing any action of behalf of the committee including, but not limited to, the making of contracts, the payment of claims, the allocation of office space, or the hiring or dismissal of staff, without the expressed authorization of two-thirds of the membership of the committee. The authorization applying only to the matter or matters under immediate consideration. Presently, the Joint Rules Committee may act with an affirmative vote of a majority of the members from each house and the Joint Rule 40 expressly authorize the committee to appoint a chief administrative officer and give this person such duties relating to the administrative, fiscal, and business affairs of the committee as the committee may prescribe.

Article 3 sets forth various provisions relating to legislative rules and procedures. Section 9920 would require a two-thirds vote of the membership of the house in question to adopt or amend a rule of that house and a two-thirds vote of the members present and voting, a quorum being present, to temporarily suspend a rule of that house. Under present rules, the adoption, amendment and suspension generally require only a majority vote of each house.

ASSEMBLYMAN NAYLOR: Mr. Chairman?

CHAIRMAN KEENE: Yes, Assemblyman Naylor.

ASSEMBLYMAN NAYLOR: Could you tell me what the rules were up until '82 and how long, in your recollection, the rules had stayed that way with respect to the suspension of rules?

MR. GREGORY: I believe that part of that time the Senate allowed suspension of its rules by majority vote and the Assembly required suspension by a two-thirds vote of those present and voting, which is less than absolute two-thirds, but it was two-thirds present and voting.

ASSEMBLYMAN NAYLOR: And how long had that two-thirds suspension been in effect?

MR. GREGORY: I am not aware of what year that was originally put in the rules.

ASSEMBLYMAN NAYLOR: Mr. Chairman, it is my understanding it has been in since the inception of the Legislature. A two-thirds vote to suspend the rules was.... what about the Joint Rules.

MR. GREGORY: I haven't touched the Joint Rules. At this point we are just talking about the rules of the houses.

ASSEMBLYMAN NAYLOR: All right. Fine.

UNIDENTIFIED VOICE: You are saying that the if a rule changed in the house, it required a two-thirds vote of those present and voting.

MR. GREGORY: In the Assembly.

UNIDENTIFIED VOICE: In the Assembly. So, in other words, it was not an absolutely two-thirds vote. Well, let me ask you, how does that two-thirds requirement existing in 19 -- what was the date?

ASSEMBLYMAN NAYLOR: Since the inception of the Legislature.

UNIDENTIFIED VOICE: Since the inception of the Legislature, to use Mr. Naylor's terms, how is that two-thirds different from the two-thirds that is being required by Gann?

MR. GREGORY: This proposition would require two-thirds of the membership of the house; with 80 members that would require 54 votes. A two-thirds present and voting requirement requires that a quorum be present. A quorum in the Assembly would be 41 members. Assuming that a quorum is present, you would only need two-thirds of those present and voting, which means that a rules suspension could be adopted by 1-0.

UNIDENTIFIED VOICE: Thank you.

ASSEMBLYMAN RICHARD MOUNTJOY: But, as a practical matter, if a major rule was to be suspended, wouldn't you suspect that all 80 members of the Legislature, of the Assembly at least, would be on the floor at that time, if a major rule was to be amended?

MR. GREGORY: I think that should maybe be addressed to the Chief Clerk, who is the Parliamentarian, because I am not there on a day-to-day basis on the floor to answer that question.

ASSEMBLYMAN MOUNTJOY: But, in fact, that would be the case that the 80 members, on a major rule change, would be on the floor, thereby requiring a true two-thirds.

MR. GREGORY: Only those present and voting, Mr. Mountjoy. If the members...

ASSEMBLYMAN MOUNTJOY: That's the law.

MR. GREGORY: ...did not vote. If the members did not vote, they would not be allowed to be counted.

ASSEMBLYMAN MOUNTJOY: The practical effect of that is the same.

CHAIRMAN KEENE: Can we treat that, Mr. Mountjoy, as a conclusion on your part that in all probability, from your standpoint, in all probability a large number, perhaps 80 members, would be there, but I don't think that we can put it as a legal question to the Legislative Counsel, who is suggesting that only two-thirds of those present and voting would be required to be there once a quorum is established.

ASSEMBLYMAN NAYLOR: Mr. Chairman, I have a further question.

CHAIRMAN KEENE: Mr. Naylor.

ASSEMBLYMAN NAYLOR: Mr. Gregory, if at the beginning of the session new rules are not adopted, what is the -- what rules do the respective houses operate under?

MR. GREGORY: If new rules are not adopted, then under the general principles of parliamentary law, the houses operate under the rules last in effect before the session started as a matter of custom and usage.

ASSEMBLYMAN NAYLOR: Okay, so that if perchance some intransigent minority decided they wanted to block the adoption of rules at the beginning of a session, all that would happen would be the continuation of the previous rules -- by parliamentary custom?

MR. GREGORY: That would be the result.

ASSEMBLYMAN NAYLOR: Thank you.

CHAIRMAN KEENE: Mr. Gregory, why don't you proceed with your testimony?

MR. GREGORY: Section 9921 would require a two-thirds vote of the membership of each house to adopt or amend a joint rule, and a two-thirds vote of the house in question to temporarily suspend a joint rule. Historically, adoption and amendment of the joint rules have been permitted on a majority vote; temporary suspension has required a two-thirds vote.

Section 9922 would require that all standing committees except the rules committee be created and the size and jurisdiction thereof established through the adoption or amendment of the rules of the respective houses by a two-thirds vote of that house. Committee membership would be required to be proportional to the partisan membership of the house, and members of each committee could be selected by their respective caucuses.

Presently, the standing committees of each house are created and, in the Senate, the size and jurisdiction thereof are established by the rules adopted by a majority membership of the respective house. In the Senate, committee members are appointed

by the Senate Rules Committee, which is required to give consideration to seniority, preference, and experience and is further required, as far as practicable, to give equal representation to all parts of the state. In the Assembly, the Speaker initially determines the size and appoints members to the standing committees giving consideration to the preference of the members. Once established, the size of an Assembly standing committee may only be changed by a majority vote of the membership of the Assembly.

Section 9923 would prohibit any special or select committee or subcommittee from being established in either house except by a two-thirds vote of the rules committee of that house. Membership on these committees and subcommittees will be made pursuant to Section 9922; in other words, proportionately by the respective party caucuses.

Presently, the Senate Rules Committee and the Speaker of the Assembly, respectively, are authorized generally to establish and appoint the members of special committees or subcommittees of the General Research Committees of the Senate and the Assembly. There is no requirement of proportionate representation on these committees or subcommittees.

Moreover, it is a common practice when less than a quorum of a standing committee is present for the members present to act as an ad hoc subcommittee, which takes testimony and then reports to the full committee when a quorum is present. It is not clear whether Section 9923 is intended to affect this practice, but the literal language of the section would appear to prohibit it.

Section 9924 would require that Joint Committees be established by concurrent resolution, two-thirds of the membership of each house concurring that membership on these committees is equally divided between the Senate and the Assembly, and the members from each be proportional to the partisan composition of that house and selected by the party caucuses.

Presently, joint committees may be established by resolution or statutes and, except as otherwise provided by that resolution or statute, the members thereof are appointed by the Senate Rules Committee and the Speaker of the Assembly, respectively. There is no requirement of proportional party representation.

Section 9925 would allow a member to cast a vote for another member, allow a member to change his/her vote or add a vote to the roll after the vote is announced, with the consent of four-fifths of the membership of the house. In addition, it would not allow any vote to be taken in committee or subcommittee in the absence of a quorum, except the vote to adjourn.

These provisions are generally consistent with present rules. However, in the Assembly, an absent member may have his or her vote added to a roll if the outcome of the vote is not changed and there is no objection to the addition. In the Senate, there is no provision currently for vote switching or adding a vote.

As stated earlier, it is a common practice when less than a quorum of a standing committee is present, for the members present to act as an ad hoc subcommittee, which takes testimony and then reports to the full committee when a quorum is present. It is not clear whether Section 9925 is intended to affect the practice of taking a vote before a quorum is present, but, again, the literal language of the section would appear to prohibit that practice.

Section 9926 generally recodifies the open meeting requirements of present Sections 9027 and 9028. That is, meetings of the houses and their committees must be open and public and appropriate notice thereof given. Section 9926 does, however, refer to notice in the Journal when it should have referred to notice in the File and, more significantly, requires a three-fifths vote, instead of a majority vote to dispense with this notice. Moreover, the section requires only a two-day notice in some circumstances where a four-day notice is presently required.

Section 9927 would specify when the Assembly or Senate or committees thereof may meet in executive session. The section is based on present Section 9029; however, the section more narrowly limits the circumstances where an executive session may be held. Specifically, Section 9927 would no longer permit an executive session (1) to consider matters relating to appointment, employment, or dismissal of an employee; (2) to hear complaints or charges brought against an officer, employee, or public official; (3) to consider matters relating to internal house management; (4) to consider the assignment of bills to committee; or (5) for a conference committee to consider nonsubstantive amendments.

CHAIRMAN KEENE: Yes, Mr. Calderon.

ASSEMBLYMAN CHARLES CALDERON: Regarding Section 9927 insofar as it relates to matters pertaining to employment and dismissal of an employee, with respect to public bodies, other than the Legislature, what is the law relating to (inaudible)...

MR. GREGORY: Generally speaking, there is authorization to consider those in executive session.

ASSEMBLYMAN CALDERON: For all other public bodies?

MR. GREGORY: I can't categorically state for every public body, but as a general rule, they allow those matters to be held -- to be determined in executive session.

Of interest on this particular provision, the proposition still would allow an executive session to hear matters relating to the appointment or dismissal of a public officer. But, as to a public employee, it would require that to be held outside of a executive session.

SENATOR DIANE WATSON: What is a....

CHAIRMAN KEENE: Yes, Senator Watson?

SENATOR WATSON: ...public employee?

MR. GREGORY: A public employee would be a person who is employed by a unit of government who does not exercise directly part of the sovereign powers of the government. In other words, to distinguish them from a public officer, the example would be like the head of an agency, would be the officer. The head of the agency can exercise all powers of the agency, direct the employees of the agency in their duties, things of that sort. Chief deputy of an agency probably would a public officer. A secretary would be a public employee.

SENATOR WATSON: All right. For purposes of this section, suppose a member decided to talk with the Rules Committee about an employee that he or she wanted to let go. Would that be subject to this section? Would it be affected by this section?

MR. GREGORY: It would be affected by this section, yes. If the officer -- the employee was an employee, someone, again, like a clerical staff or something, then discussion could not be in executive session.

SENATOR WATSON: In other words, there would be no confidentiality covering that discussion. It would have to be out in an open meeting with the public involved?

MR. GREGORY: That's correct.

SENATOR WATSON: Thank you.

SENATOR KEENE: Okay. Mr. Gregory.

MR. GREGORY: Section 9928 would prohibit any member of the Senate or the Assembly from signing a Conference Committee Report unless a full and public meeting of the Conference Committee has been held. It would further prohibit adoption of a Conference Report until the report has been printed and made available to the public for a minimum of two days, unless this requirement is dispensed with by a vote of two-thirds of the membership. Any Conference Report adopted in violation of this provision would be deemed void.

The general requirement of an open public notice meeting continues present practice. It is not clear whether a full meeting of a Conference Committee requires all members to be present or that there is complete testimony from all interested parties or both. The requirement that the Conference Committee Report be printed evidences a lack of understanding of what a Conference Report is. Essentially, it's basically a set of amendments.

Finally, deeming a Conference Report void suggests that, as intended, the underlying bill is deemed not to have been enacted and would permit an unprecedented collateral attack on any statute enacted through this process.

SENATOR KEENE: Yes, Mr. Naylor.

ASSEMBLYMAN NAYLOR: Mr. Gregory, I find that second paragraph that you just read into evidence a misunderstanding the initiative and the bias on your part. When we pass bills to the floor of the Legislature out of policy committee or Ways and Means Committee, is it not true that they're required, even though amended in the committee, to be in print on the floor for two days prior to, that is to be read a second and third time and to be in print before we vote on them? That's the current procedure. They're in print, right?

MR. GREGORY: It is required that they be read whether or not they're ready. A second or a third time depends on when they're previously amended, but they must be read at least a third time before you consider them when they come to the floor from committee and the bill must be in print when the bill is considered by the committee. Excuse me, considered by the floor, yes.

ASSEMBLYMAN NAYLOR: And why should a bill not be required to be in print when it comes from a Conference Committee where it may contain major amendments added in Conference Committee?

MR. GREGORY: Because until the floor votes on that Conference Report, that report has not been adopted. All the amendments that are in bills that are before you on the floor of the House have been voted on by the floor of the House and, therefore, they are amendments adopted by the House, and then the bill is reprinted after the House has voted. When the Conference Report comes to the floor, it has not been adopted at that time. The House may very well reject it and appoint a second Conference Committee. So at that time to print the bill with the amendments in it would be to place amendments in the bill which have not been voted on by the floor of the House.

ASSEMBLYMAN NAYLOR: So you're suggesting that a better way to accomplish this purpose would be to require first adoption of the Conference amendments, then another third reading on the

floor to have the bill in print. I thought one of the points of having bills in print was that they would be available to the public and everybody would know what's in them. So we adopt the amendments, and then you have to wait another day and vote on the bill. That's the purpose of this section.

MR. GREGORY: But the Conference Report itself is published and is on the desk of the members at the time they vote on the bill along with a copy of the Legislative Council's digest on what those amendments would be.

ASSEMBLYMAN NAYLOR: And how many, and what's the time requirement between the time the Conference Committee meets and the time that can be taken up on the floor?

MR. GREGORY: There is no current time requirement.

ASSEMBLYMAN NAYLOR: Right. And what about public participation? What about availability to the general public of those Conference amendments?

MR. GREGORY: I know that the Chief Clerk of the House and the Secretary of the Senate reproduce large quantities of those. What their availability is to the public I don't know.

ASSEMBLYMAN NAYLOR: There's no requirement that they be available to the public, right?

MR. GREGORY: Not that I know of.

ASSEMBLYMAN NAYLOR: Okay. Well, I'd just like to point out to the Committee and other members here that the purpose of that provision is simply to provide roughly the equivalent public notice, press availability and so on, of substantive Conference Report amendments before a vote that is now required for a bill coming out of a normal policy committee before it's sent off to the Governor.

SENATOR KEENE: But I think the point that's being made is that that occurs after the amendments are adopted. This would occur before the Conference Report is adopted.

ASSEMBLYMAN NAYLOR: I, yeah, I can see the distinction there and, of course, the alteration that would be required to make an equivalent, I guess, would be for us to have two votes, one vote adopting the Conference amendments and then in print for another day, as we do with regular bills, so that the following legislative day you would have the amended bill before us. And I'm sure there would be bipartisan agreement on that kind of a change, which would require two-thirds vote, if this initiative passes.

MR. GREGORY: Section 9929 substantially recodifies the criminal penalty now provided by Section 9030 for attendance by a

member at a meeting where the action is taken with knowledge that the meeting is held in violation of the open meeting requirements.

Section 9929.5 is based on present Section 9031, which provides express authority for an action by mandamus, injunction, or declaratory relief for the purposes of preventing violations of the open meeting law. This section would provide similar expressed authority for an action to prevent any violation of any provision of Proposition 24.

Article IV sets forth various provisions regarding legislative funds and administration. Section 9930 continues existing law insofar as it provides for deposit of appropriations in respective legislative contingent funds and for disbursement by the respective Rules Committees. However, Section 9931 would require that disbursements from the Senate and the Assembly funds be divided proportionately according to the partisan composition of the respective houses, or as otherwise provided by a two-thirds vote of the membership of the respective Rules Committee. Funds in the joint contingent fund would be allowed to be dispersed only pursuant to a two-thirds vote of the total membership of the Joint Rules Committee. Money appropriated for legislative printing would be subject to the same requirements for proportionate, partisan disbursement or a two-thirds vote. There is no present requirement of proportionate disbursement and funds are allocated by their respective Rules Committees by a majority vote.

Section 9934 would require within 30 days after the adoption of the proposition, that funds for support of the Legislature...

ASSEMBLYMAN MOUNTJOY: May I, may I just...

SENATOR KEENE: Mr. Mountjoy.

ASSEMBLYMAN MOUNTJOY: The portion on expenditures of funds, I think the initiative, as it speaks to the expenditures of funds, does not actually require a two-thirds vote of the funds. It does require it, however, if the funds cannot enjoy the two-thirds vote of the Rules Committee. Isn't it true, Bion, that what happens is that the funds can be expended by a simple majority of that Rules Committee, however, an equal amount, or a like amount, proportionatly would fall to the other side. In other words, you could not spend politically money from that fund without a two-thirds vote. The simple buying of pencils, the simple buying of things of that sort, would simply take a two-thirds, a simple majority vote really, and if it did require the two-thirds, it could not get the two-thirds, then proportionally the funds would have to be spent for the minority party. Isn't that the way that the initiative addresses that issue?

MR. GREGORY: The answer is "yes" and "no." As to the two.

ASSEMBLYMAN MOUNTJOY: The answer is yes, but I don't see the...

MR. GREGORY: The answer is "yes" and "no." As to these aspects, the two house contingent funds, the Assembly Contingent Fund and the Senate Contingent Fund, you are correct, that if it's done on a partisan, I think as the statement says, if it's done on a partisan proportional basis, then a majority vote of the committee could authorize the expenditure of the funds. If you buy two pencils, buy three pencils, give two to one and one to the other, you can do it by majority vote. As to the joint fund, however, there's an absolute two-thirds requirement on the joint fund, regardless of how the money's distributed. It could be distributed right down to the penny on funds, and you still have to have a two-thirds vote with respect to the joint fund.

Section 9934 would require, within 30 days after the adoption of the proposition, that funds for support of the Legislature be reduced by an amount equal to 30 percent of the amount appropriated for support of the Legislature for the 1983-84 fiscal year, and thereafter would limit the amount appropriated for support of the Legislature to an amount equal to that expended for support in the prior fiscal year, adjusted by the increase or decrease in State General Fund spending.

Section 9935 generally recodifies existing Section 9129 regarding the continuous availability of appropriations deposited in the contingent funds. However, the new section would require that unexpended funds appropriated for the expenses of a special session revert at the end of a session. This provision probably is meant to refer only to unencumbered funds in order that funds remaining at the end of the session may be used to pay for expenses which accrue. In other words, the funds may have been encumbered for the expenses during the session but which are not actually paid for until the session ends.

Section 9936 generally recodifies existing Section 9931, which requires issuance of an annual public report on the expenditures made from their respective contingent funds. In addition, Section 9936 would require issuance of a quarterly report and would add two new categories, staff salaries and expenses and third party contracts to the presently required list of itemized expenditures.

Section 9937 would require the Joint Rules Committee to contract annually for an independent audit of the revenues and expenditures from the Assembly Contingent Fund, the Senate Contingent Fund, and the Contingent Funds of the Assembly and Senate. In addition, this action would provide that the organization which performs the audit shall be subject to the approval of the Fair Political Practices Commission. This

provision is entirely new; however, it has been the past practice of the respective Rules Committees to contract for an independent audit, but the selection of the auditor has never been subject to FPPC approval.

This completes my discussion of the newly added provisions of the measure. I state at the outset, the measure would also repeal certain provisions, namely Sections 9921 to 9923 inclusive, of the Government Code, which generally require members of the Assembly and staff to assist a Speaker and carry out the duties of the Speaker, limit the amount and method of payment for performing certain services, and require the payment of certain expenses incurred by the Speaker. The repeal of these divisions would not appear to work any significant change in the law.

Mr. Chairman, this completes my statement. I'd be happy to respond to any questions the Committee may have.

SENATOR KEENE: Mr. Harris.

ASSEMBLYMAN HARRIS: Yes. Mr. Gregory, could you tell me, relative to Sections 9911 and 9922, you don't really need to refer to these sections specifically to answer my question, what would be the impact of those two sections relative to the creation of the Assembly Rules Committee and the creation of the committees of the house on a third party or an independent? Would they effectively be barred from serving on committees or serving on the Rules Committee by virtue of the language and the proposition?

MR. GREGORY: Well, they would certainly be barred from serving on the Rules Committee because the Rules Committee provisions recognize the two largest parties in the house, and so if you were a third or a fourth largest party, you would not be able to be any member of the Rules Committee.

ASSEMBLYMAN MOUNTJOY: May I just ask...

SENATOR KEENE: If you just hold off for a second, Mr. Mountjoy. I have (inaudible).

ASSEMBLYMAN HARRIS: Well, let me ask you on that question.

ASSEMBLYMAN MOUNTJOY: It's on that point. It's on that very point.

ASSEMBLYMAN HARRIS: No, but I'm asking him to answer it.

ASSEMBLYMAN MOUNTJOY: Okay. Okay. I'll get right back to you.

MR. GREGORY: With a respect to a person who might be denominated today as independent, there is no such thing as an independent party in California. It generally refers to those people who have declined to state a party preference. Since they are not a member of a party, that's certainly an open question as to exactly what their participation might be, but they're clearly not a member of a party.

ASSEMBLYMAN HARRIS: With the growing number of people who are declaring themselves "independents," then there theoretically could be a growth in the number of candidates who might be elected under an independent banner. Ray Johnson, who is currently serving as a member of the Senate, and effectively he would be barred. Is that correct?

MR. GREGORY: From the Rules Committee and a member of another party other than the two largest. The size of the party would obviously have to rise in number so that when the committees of the Legislature were established, that the percentage of their participation be sufficient to entitle them to a seat on a particular committee. Being one or two members in the house, that percentage probably would not allow them participation on a standing committee.

ASSEMBLYMAN HARRIS With that in fact, does that pose any constitutional problems that you can see?

MR. GREGORY: The case law in this particular area, in which there is a paucity of it, under others, another legislature, it has not proved a constitutional problem. However, that has only been in legislatures in which there was full freedom on the floor of the house, such as the Legislature has today to select whomever the house wants to serve on a particular standing committee. It was not in the rules of the Houses that specifically allocated particular ratios of the parties to the committees. So I think the best that could be said is that it's an open question.

ASSEMBLYMAN HARRIS: Thank you.

SENATOR KEENE: Assemblyman Mountjoy.

ASSEMBLYMAN MOUNTJOY: Mr. Gregory, the election to the Rules Committee, if in fact there were a number of independents elected to the Legislature, which, over the past history, really has not occurred...

SENATOR KEENE: I keep threatening Senator Roberti to go independent.

ASSEMBLYMAN MOUNTJOY: Not elected to it yet. The provisions of this initiative allow that by a vote of the Legislature, in furtherance with this act, and this act is to allow proportional representation by legislators, isn't it possible, then, that the Legislature, to insure the protection of

an independent in the Legislature, should there be a number elected to the Legislature, isn't it under this reform initiative allowable that we could amend those rules to allow that? Because, after all, this is for proportional representation in the house. Is that not allowable under the initiative?

MR. GREGORY: It's two points. First of all, I think that if this is amended, that it would be in furtherance of the purposes of the act, and that would be an allowable amendment. However, that amendment could not be done by a single house. That house would have to have the concurrence of another house and the signature of the Governor before they could make the amendment under the provisions of this act.

SENATOR WATSON: Maybe on two-thirds or three-fifths?

MR. GREGORY: By a two-thirds vote. Also by a two-thirds vote of each house and the signature by the Governor.

ASSEMBLYMAN MOUNTJOY: Correct.

MR. GREGORY: Unless you were to submit it back for the electors for a vote.

ASSEMBLYMAN MOUNTJOY: But it is permissible to amend the rules to allow equal representation by an independent party, should they be elected to the house?

MR. GREGORY: I think that that would not be contrary to the provisions of the initiative.

ASSEMBLYMAN MOUNTJOY: Okay. The second point is, the present vote on the joint committee of rules for expenditures, etc., is it not 50 percent of both houses of the Legislature? Fifty percent of the Assembly and 50 percent, or majority of the Assembly and majority of the Senate?

MR. GREGORY: It's a majority, majority of the...

ASSEMBLYMAN MOUNTJOY: Not the majority of the Rules Comm...

MR. GREGORY: ...other contingent, that's the majority of the contingents of both houses.

ASSEMBLYMAN MOUNTJOY: Yes.

MR. GREGORY: There is slightly more than 50 percent.

ASSEMBLYMAN MOUNTJOY: Yes, it's about 60 percent at the present time, as required in statute today.

UNIDENTIFIED MEMBER: Mr. Chairman?

SENATOR KEENE: Yes. I have Mr. Torres, Senator Roberti, Mr. Naylor. Senator Torres, Senator Roberti, Mr. Naylor.

SENATOR ART TORRES: Just fine out here.

UNIDENTIFIED VOICE: Call a senator.

SENATOR KEENE: Senator Torres with his booming voice. Thank goodness.

SENATOR TORRES: Under Baker vs. Carr, the Supreme Court decision which articulated reapportionment process in terms of one person, one vote, are those constitutional guidelines going to be affected by Proposition 24 when you have what you might consider an unequal representation within a Rules Committee?

MR. GREGORY: Well, as indicated earlier, the only decision that we have found is one involving the legislature in Arizona, where a group of Arizona Democrats filed suit, arguing that they were denied positions on the committees of the Arizona Legislature by the majority. And in that particular situation, the court held that it was not a question that could be decided by the courts and did not raise any constitutional issues, that the assignment to the committees did not inhibit the ability of the member to vote on the floor and debate matters on the floor, and that the denial by the majority of the committee assignments did not rise the constitutional standards at that time.

SENATOR TORRES: Yes, but Bion, with that decision, was that a Supreme Court decision?

MR. GREGORY: That was a decision by the Ninth Circuit Court.

SENATOR TORRES: The Ninth Circuit?

MR. GREGORY: Yes. The Federal Ninth Circuit.

SENATOR TORRES: Did that decision affect, however, the constitution, the constitution itself, of such a committee, not whether it's this person's responsibilities for a question but what constitutes such a committee? In the face of those are constitutional issues raised in Baker vs. Carr?

MR. GREGORY: Well, it was not like this. There were no particular set of rules in the Arizona Legislature that specifically mandated any representation on the committees. It was like the normal Legislature, where the rules are relatively silent as to how the people in power can formulate the membership of the committee, and it was not a partisan proportional representation. That's why I made my earlier statement that in relation to this particular thing, it's not clear how the court would come down where there now has been proposed a strict

partisan proportional representation on committees. So it's such that someone who's an independent would have to, then, be able to get the favor of two-thirds of the house before they could be a member of a committee.

SENATOR TORRES: So in the Arizona case -- one could argue that the body itself was constitutionally put together; however, a simplification of its duties were brought into question by the suit.

MR. GREGORY: That's correct.

SENATOR TORRES: The rights of the parties, once constitutionally put together, was the issue before the court, not whether or not they had violated by even constituting themselves as a body in the face of these types of regulations.

MR. GREGORY: Well, they had nothing like this before them. They were dealing solely with a normal legislative environment where the majority had structured the committees in such a way that these people were denied the seats to which they felt that they were entitled and that was the issue.

SENATOR TORRES: So this would be the first time that these kind of issues would be faced since the Baker vs. Carr decision or subsequent decision (inaudible).

MR. GREGORY: We're not aware of a lawsuit in any other state that relates to something directly like this.

SENATOR TORRES: If you were to asked to argue in behalf of the Legislature, perhaps in arguing as private counsel on behalf of the majority party, what would be your arguments against this proposal on those types of constitutional issues?

UNIDENTIFIED VOICE: Give us your case now.

SENATOR KEENE: We appreciate the fact that there is a little bit of speculation and instant cogitation involved.

MR. GREGORY: I think my argument, my argument on constitutional grounds would be to look at the entire operation of the California Legislature and the use of the committee system for the formulation and development of legislation and bring to the attention of the court that in California, like the Federal Congress, that we use our committee system very extensively in the formulation of development of legislation and many of the critical decisions on legislation are made in the committees of the houses as opposed to on the floor. Many legislatures, they use their committee system, but they do many more amendments on the floor and much of the activity occurs on the floor. And to deny a person who is not a member of one of the two largest parties a seat on the Rules Committee or because of the fact that they cannot muster enough proportional strength to become a

member of a nine, or seven, or a thirteen person committee, denies them the participation in the process that's available to the members of the largest parties.

SENATOR TORRES: And thereby denying the very public, who elected that representative, an equal representative voice on that body.

MR.GREGORY: Yes. Right.

SENATOR TORRES: Thank you, Mr. Chairman.

SENATOR KEENE: Okay. I have Senator Roberti next. Senator Speraw says he has something on that point. Does Senator Roberti care to yield?

SENATOR DAVID ROBERTI: No. I am on the point, too.

SENATOR KEENE: Senator Roberti's on the point as well.

SENATOR ROBERTI: Getting to the practical situation, right now in the State Senate we have one independent. Therefore, is it your judgment that that independent, in this case Senator Johnson, under the terms of Proposition 24, cannot serve on the Rules Committee?

MR. GREGORY: That's correct, Senator Roberti.

SENATOR ROBERTI: Is it your judgment that if he can serve on, if he cannot serve on the Rules Committee, can he vote for somebody who would serve on the Rules Committee?

MR. GREGORY: Well, he would not be able to vote for that individual. He would be able to vote for the President pro Tempore of the Senate...

SENATOR ROBERTI: I mean the..

MR. GREGORY: ...because that would be elected by the membership, but the...

SENATOR ROBERTI: But the four members?

MR. GREGORY: ...other four members are chosen by the caucuses of the largest party and second largest party. Senator Johnson is actually a person who declined to state a party preference so he would not be a member of those caucuses.

SENATOR ROBERTI: So of the five members of the Senate Rules Committee, as it would be constituted under Proposition 24, 39 of the senators could vote, in one way or another, for all five of them, but one of the senators, who is an independent, could only vote for one of them.

MR. GREGORY: That's correct.

SENATOR ROBERTI: Would Senator Johnson, in this case, be able to serve on any committee based on proportional representation that is -- under what system would he be able to serve on a committee? I take it that under Proposition 24 the membership of the committees, aside from the chairman, would be selected by the caucuses. Now, how does Senator Johnson get on a standing committee?

MR. GREGORY: Assuming that the size of the committees will be established and that the percentage representation of each house of the major parties will be applied, that particular number and rounded up or down to some criteria, Senator Johnson, who is currently one member of a 40-member body representing roughly two-and-a-half percent of that body, would have to, in applying that two-and-a-half percent figure against the size of the committee, produce a number that would allow that, allow him to have one seat on that particular committee.

SENATOR ROBERTI: So only if we had a committee roughly composed of like 20 people.

MR. GREGORY: Twenty or more people.

SENATOR ROBERTI: Twenty or more people would Senator Johnson be able to sit on a committee.

MR. GREGORY: Assuming you use the normal rounding up and down.

SENATOR ROBERTI: But we have, as you know, but we have no committee of 20 members or more. So effectively, Senator Johnson could not sit on any standing committee either.

MR. GREGORY: Not as presently constituted in number.

SENATOR ROBERTI: So, therefore, he cannot sit on the Rules Committee, he cannot sit on any standing committee, and he cannot vote for any member of the Rules Committee except the President Pro Tem.

MR. GREGORY: That's correct.

SENATOR ROBERTI: Can he participate in the selection of any member on a standing committee?

MR.GREGORY No, because those would be decided by the party caucuses, and he's not a member of, he's declined to state a preference for either party.

SENATOR ROBERTI: So, therefore, he effectively is precluded from even selecting a member on a standing committee.

MR. GREGORY: That's correct.

SENATOR ROBERTI: Thank you.

SENATOR KEENE: Mr. Naylor and then Senator Speraw. Let me just announce before the questioning resumes that we'd like to request that all witnesses who follow Mr. Gregory keep their statements down to 10 minutes, unless it works an extraordinary hardship on you. Now, that's independent of any questions that the Committee members may seek to ask, and let me also point out that we have the world's leader in stopwatches to tell us when the 10 minutes is up. This gives you some opportunity to amend your statements downward, if you need to, in order to remain within that time limit, but I think we have to keep the hearing moving and that's why I'm suggesting that. Assemblyman Naylor.

ASSEMBLYMAN NAYLOR: Yes. Mr. Chairman, two points. Mr. Gregory, I look at the relevant sections of the initiative on this issue of a decline-to-state or a third-party person. It seems to me that it is possible within the language of the initiative unamended that Senator Johnson could be, in fact, chosen for committee membership by one or the other, or possibly both caucuses. It's not clear that he has to be registered with the party in order to serve on a standing committee, so long as he was elected to that committee by one of the caucuses. Would you care to comment on that? That certainly is...

MR. GREGORY: I think you're correct, in a sense, that we are talking about earlier is whether Senator Johnson would be entitled in of himself to a seat on a committee, or whether or not to participate in a vote on the committee, but I think you are correct, in a sense, that the proposition is not clear as to whether or not one or either parties could chose someone other than their own party to take one of the seats which we allocated to that party on the committee. And if one party is willing to give up a seat to a member of another party or a member of no party, I think that they would have the authority to do so under the proposition.

ASSEMBLYMAN NAYLOR: We established earlier that this proposition can be amended by two-thirds of each house, that is by legislation, just as Proposition 9, the Political Reform Act, can now be amended. Can you think of any good reason why any member of either party would not support an amendment to correct this obvious oversight in the drafting of the language?

MR. GREGORY: Pure political power.

ASSEMBLYMAN NAYLOR: No, I mean, I --. Let me just say, quite, you know, from my standpoint that inasmuch as no independent, to our knowledge, has ever been elected, or any third-party member, to the Legislature, certainly not in recent years, and Senator Johnson's decision occurred after this was significantly on its way. That is certainly an unanticipated situation, and that's why this measure was given the two-thirds vote amendment capacity, just as with Proposition 9, where there

are all sorts of sensitive political reform issues relating to campaign contributions, lobbyists, conflict of interest, disclosure and so on, that we've amended over the years to make it more workable to meet the situation. I don't see why anyone would oppose an amendment on this.

SENATOR KEENE: Senator Roberti has a point of order.

SENATOR ROBERTI: Point of order...to clarify a point. The Johnson decision to become an independent was before the petition was filed with the Secretary of State. Now it may have occurred after you had been to your lawyers, which, you know, is something nobody else happened to know about; though, quite frankly, it was amendable, had somebody been disposed toward protecting independents, which I don't think the Republicans at that time were. A change could have been made. The Johnson decision, and it was made quite independent of this initiative, was made before the Secretary of State received the filing, and it's quite clear to us that there was no change made because it was a desire to punish Senator Johnson.

SENATOR KEENE: Well, it goes beyond the point of order, I have to say, Senator Roberti. Assemblyman Naylor, back to you.

ASSEMBLYMAN MOUNTJOY: I just want to go over that once more that, in fact, either caucus could, in fact, place on the Rules Committee, at their choice, an independent, and at that point that independent would have a voice in the committee makeup. Is that correct? He would have all the power of that Rules Committee, if he were placed there, under the provisions of this initiative that either caucus could, in fact, place on the Rules Committee a member of an independent party.

SENATOR KEENE: I'll give the witness a chance to answer Assemblyman Mountjoy, but Assemblyman Naylor was the person who had the floor.

ASSEMBLYMAN MOUNTJOY: Oh, I'm sorry.

ASSEMBLYMAN NAYLOR: Senator Roberti may well be correct on the timetable, and all I can say is I think that the drafting of this was not done with an independent or a third-party member in mind and that that would be something that should obviously be corrected. Then I yield -- can, I mean, can Mr. Mountjoy finish his point or the witness respond?

SENATOR KEENE: I didn't look over to see who was speaking when I recognized you. I'll give the witness an opportunity to answer and then I'll recognize -- and then we'll go to Senator Speraw next. So why don't you answer Assemblyman Mountjoy's question again.

MR. GREGORY: The members of a party caucus could elect someone other than a member of their...(inaudible)

CHAIRMAN KEENE: Okay, Senator Speraw, sorry.

SENATOR OLLIE SPERAW: (Inaudible)... an advantage to Republicans or Democrats or to Senator Johnson, and I think what we ought to be considering here is we are talking about something that is going to be (inaudible)... And in a short time there won't be a Senator Johnson, there may be a change in the power structure, and what we ever we do today will apply to the other power if balance changes. First of all, Senator Johnson was not elected as an Independent. He was elected as a Republican and chose to become an Independent afterwards. Now if he is reelected, he will be elected as an Independent. But then isn't it true that until he is damaged, what's the complaint? We have the ability, we have the -- the structure is there that he could be put on the committee, he could be put on Rules Committee, but until he isn't, what has he been denied? Is it true that the structure is there (inaudible)...

MR. GREGORY: If elected by one of the party caucuses.

SENATOR SPERAW: Yes, but the structure is there that he could be. Now until he isn't, what's the complaint? (inaudible)... until someone has been denied something, the structure is there to allow it.

MR. GREGORY: Sir, I am not saying something is either right or wrong with the measure. I am just explaining what the effect would be if the measure was in place and this particular fact situation were present.

SENATOR SPERAW: Yes, and if there were only political measures used to deny him, there is nothing within the structure of this to deny an Independent anything.

MR. GREGORY: Not on the face of it because on the face of it a party caucus could actually elect someone from the other party caucus if they so chose, on the face of it.

SENATOR SPERAW: So, this does not deny an Independent anything other than to serve on the Rules Committee?

MR. GREGORY: No they could even serve on the Rules Committee, as long as that party the caucus wanted to give up its own party seat.

SENATOR SPERAW: Good. So, unless (inaudible).

MR. GREGORY: Not on a legal basis.

UNIDENTIFIED VOICE: And that's the current system.

CHAIRMAN KEENE: Human nature may be more compelling than the laws sometimes.

ASSEMBLY NAYLOR: Mr. Chairman?

CHAIRMAN KEENE: Assemblyman Naylor and then Assemblyman Robinson.

ASSEMBLYMAN NAYLOR: Just a quick point...

SENATOR SPERAW: I'm sorry, one other question of Mr. Gregory?

CHAIRMAN KEENE: Senator Speraw.

SENATOR SPERAW: You mentioned that some legislatures made a greater use of amendments on the floor. Is it true that any member of the California Legislature can submit amendments to the floor even though we may not do it often, but isn't the same mechanism there? We can use the amendment system as much as we choose?

MR. GREGORY: That's correct. Any member may submit amendments to the body.

SENATOR SPERAW: So, the fact that we don't use it that as much as some other states does not mean it doesn't exist and that a person who may have been denied a committee that he wanted to serve on can still submit amendments to effect (inaudible)...

MR. GREGORY: Yes, that's been frequently used, but that is within the power of a member to submit amendments.

SENATOR SPERAW: (inaudible)...

MR. GREGORY: Well, I think it might. But, I brought that up as a response to Senator Torres question, and I think that in relation to that question, I was pointing out that the dynamics of a body are extremely important in the political process. And these other states, the dynamics are such that amendments on the floor are common practice and are widely debated, and they spend many hours on them, and that is not the dynamics of the California practice, where amendments on the floor are rare, generally not debated extensively in numbers and are not generally favored, I would say.

SENATOR SPERAW: But, then you are talking about common practice and not what the law allows. The law is substantially the same or the opportunity is substantially the same. (Inaudible)...

MR. GREGORY: All right. In other Legislatures, amendments offered in committee do not even appear in print until the bill gets to the floor. Unlike the California practice where we amend the bill after each set, including the author's amendments.

CHAIRMAN KEENE: Mr. Naylor, Mr. Robinson, and then let's move along.

ASSEMBLYMAN NAYLOR: Yes, under current rules, assuming Senator Johnson wins reelection to the Senator, isn't it true that his continuation on the Rules Committee would involve one party or the other giving up one of its seats on the Rules Committee?

MR. GREGORY: That's correct.

ASSEMBLYMAN NAYLOR: All right. I would just like to point out with respect to your earlier comments on the distinction between statutes and rules that this proposition in Section 9920 specifically says that each house of the Legislature shall adopt rules for its proceedings for each regular and special session by resolution. So, it clearly contemplates the separate existence of a body of rules similar to the rules which now govern. This initiative is intended as guidelines in which those rules will operate.

MR. GREGORY: Do you expect a response?

ASSEMBLYMAN NAYLOR: Don't you think that that is a fair reading of the initiative?

MR. GREGORY: I think it is a fair reading of the proposition. I think it ignores the provision of the California Constitution that gives the Legislature the authority to establish rules for its own proceedings, including the vote requirement in those rules, composition of its committees, and a variety of other matters that were touched upon by this proposition.

ASSEMBLYMAN NAYLOR: How can you say it ignores it when it specifically confirms it?

MR. GREGORY: Because it confirms it with restrictions and limitations that are not present in the Constitution.

CHAIRMAN KEENE: Mr. Robinson next, and then I will recognize you, Mr. Calderon.

ASSEMBLYMAN ROBINSON: Mr. Gregory, I am a little confused by Mr. Naylor's pollyannish approach to the predicament that this initiative poses for Senator Johnson. Is it not true under the Constitution and under the rules that the Speaker of the Assembly does not have to be a member of the Assembly?

MR. GREGORY: I believe the Speaker of the Assembly has to be a member of the Assembly.

ASSEMBLYMAN ROBINSON: Where?

MR. GREGORY: Just general law relating to the multi-member bodies that the chair of the body is a member of the body.

ASSEMBLYMAN ROBINSON: Well, there is a common parliamentary law that says contrary to that including -- but it is silent. Does this initiative change that?

MR. GREGORY: No, it doesn't change that. Whatever the rule is before, this initiative would not change that.

ASSEMBLYMAN ROBINSON: But you disagree with the premise, you believe that the Speaker would have to be...

MR. GREGORY: I believe the Speaker would have to be a member of the body.

ASSEMBLYMAN ROBINSON: Would you give me an opinion on that, Mr. Gregory? Thank you.

CHAIRMAN KEENE: Okay, I had Mr. Calderon and then Mr. Connelly.

ASSEMBLYMAN CALDERON: I just want to clarify in my mind exactly what the nature -- what was going to be (inaudible)... My understanding of this proposition is that, even though it may be constitutional, questions with respect to what the Constitution requires and what this statutory change would require, isn't the language in the Gann Initiative mandatory as opposed to permissive?

MR. GREGORY: I believe the language is mandatory as to the matters that are covered and the provisions that deal with the adoption of rules by the body relative to the myriad of other rules that there are present -- that the body has presently adopted, for its conduct of business, that the body would be adopting, would not be inconsistent with what the proposition provides. So, as to the method of selection of committees, the proportional representation, the vote requirements for the adoption and suspension of rules, I believe that those are mandatory requirements of the proposition.

ASSEMBLYMAN NAYLOR: Yes, Mr. Chairman, just to engage in this, since this question was related to my question...

CHAIRMAN KEENE: We don't typically allow that in the Senate, but go ahead.

ASSEMBLYMAN NAYLOR: Well, okay, thank you. I didn't mean to suggest that they weren't statutory. I was trying to distinguish between rules and then the framework within which the rules are adopted and which they govern. Virtually every procedural thing that is covered by the current rules will still be covered by rules that are not covered in this initiative. And

this is intended as the statutory framework for structure, but not for the conduct of the proceedings of the house.

CHAIRMAN KEENE: Okay, Assemblyman Connelly.

ASSEMBLYMAN LLOYD G. CONNELLY: Mr. Gregory, just a question of clarification on Section 9920, which is the requirement that the bodies adopt rules by a two-thirds vote. In response to a question at the outset, you indicated if there is a failure to get the two-thirds vote that the existing rules carry over to the next session. Is that true in the instance of the first session that the Gann Initiative takes effect? In other words, in the absence of a two-thirds vote in January, 1985, then do the existing rules of the house carry forward to the '85-86 session?

MR. GREGORY: I think that's going to be an open question under the proposition. What Mr. Naylor was asking me, which I responded to, is that under general principles of parliamentary law, when a body fails to adopt new rules at the beginning of a new session, then under the doctrine of parliamentary law, custom and usage comes into play, and you look to the rules of the preceding session as guidelines for the operation of the body until the body adopts a different rule for its procedure. I think the interrelationship of Proposition 24 as to the current practice of the Legislature is an open legal question as to whether or not the Legislature could ad infinitum, ignore Proposition 24 and just continue with its present rules.

Certainly for a reasonable period of time, I think that the Legislature would have that authority. Whether or not 10 years later they could have not adopted any rules, you would still be arguing that they were operating under their rules that were in effect during the '83-84 session; I think that that is an open question. I am not too sure of the result of that.

ASSEMBLYMAN CONNELLY: If the Legislature was unable to agree upon a new set of rules in January, 1985, using the two-thirds vote requirement, how do the existing rules dovetail and interrelate into the statutory rules contained in Gann?

MR. GREGORY: Well, you would have this open question that someone would have to resolve as to exactly how you are going to form your committees because there is a whole different procedure for the formation.

ASSEMBLYMAN CONNELLY: Isn't it fair to say that there would be a hell of a mess?

MR. GREGORY: I think that that is an accurate statement.

ASSEMBLYMAN CONNELLY: Thank you.

CHAIRMAN KEENE: Thank you, Mr. Gregory for your testimony today. If there is nothing further, we will move on to the second witness on our agenda. We have completed the testimony of one witness, and therefore let me ask the members of the committee to please prioritize your questions, particularly those of you asking multiple questions, so that we do touch the most important stuff. I recognize that there are a lot of things connected with the implications of this proposal, but we are not going to hit everything today. Let's try to hit the high points at least that we can and then do the best job that we can.

Cindy Simon is the next witness. She is Senior Program Director of the National Conference of State Legislatures. NCSL is the official representative of the 7500 state legislators and their staffs. It is funded by the states and governed by a 46-member executive committee. Its three basic purposes are first to improve the quality and effectiveness of state Legislatures, second to foster interstate communication and cooperation and third to assure state legislatures a strong voice in the federal system. Ms. Simon.

MS. CINDY SIMON: Mr. Chairman and members of the committee...

CHAIRMAN KEENE: ...Ten minutes.

MS. SIMON: Ten minutes. Thank you.

CHAIRMAN KEENE: That doesn't mean that we are not grateful to have you. It means that we've got problems.

MS. SIMON: Okay.

I am pleased to have the opportunity to appear before you and to provide this committee with background on legislative rules and operations similar to those addressed in the Gann Initiative. Specifically, I have been asked to comment on three things, and I will abbreviate some of my comments. But, first, whether the statutory requirements of the Gann Initiative are unique among State Legislatures; secondly, the general wisdom and possible constitutionality of imposing, by initiative, statutory restrictions on internal legislative management; and, third, the experience of other state legislatures in handling some of the matters which are addressed by the Gann Initiative.

The Gann Initiative is in many ways unique. First, if approved by the voters and upheld in any subsequent court challenges, the Gann Initiative would represent the first instance in which a legislature would be asked to operate under detailed rules of procedure and operations that will be spelled out in statute and imposed from the outside of the institution.

State legislatures operate under three different levels of directives. First, there are constitutional mandates

regulating such matters as session length, legislative officers, general rules for passage of legislation and voting and, in some states, even matters of legislative compensation.

On a second level, state legislatures are given by constitutions the power to determine detailed rules of parliamentary procedure and internal legislative organization. Rules are matters reserved to the actions and consent of each house separately, except in cases of joint rules governing transactions between the houses.

ASSEMBLYMAN MOUNTJOY: Mr. Chairman?

CHAIRMAN KEENE: Yes, Mr. Mountjoy.

ASSEMBLYMAN MOUNTJOY: I need to back up just a little bit, but you said that the Gann Initiative is detailed rules. It would be the first time that it was enacted by statute, but the Gann Initiative is a very short initiative giving guidelines and not rules. The rules are specifically adopted by the Legislature. Let me show you a green book of detailed rules under which the Legislature operates. The Gann Initiative, to correct your statement, is simply guidelines for adoption of those rules, and specifically 9920 points out that the Legislature will adopt its rules. So, when you say it is an adoption of detailed rules, the detailed rules are here. It requires that those detailed rules be adopted by two-thirds vote.

CHAIRMAN KEENE: Okay. Would you like to respond to that?

MS. SIMON: As I will get into my presentation, I think that many of the provisions that are covered by the Gann Initiative are not covered similarly or imposed by statute similarly in other states. And by suggesting that they are detailed, I think that there are significant provisions covered in Gann that will result in very significant provisions on the Legislature, which are not similarly covered in other states. And in that sense, they are "detailed" by comparison.

ASSEMBLYMAN MOUNTJOY: Are you familiar with Proposition 9 of this state?

MS. SIMON: No.

ASSEMBLYMAN MOUNTJOY: That's the Proposition which swept Governor Jerry Brown into office, which governed rules of how the Legislature would conduct itself and how the Legislature would gather campaign contributions. A very similar thing to the Gann Initiative. As a matter of fact, the same kind of law; a statutory law. So, it would not be the first time that legislative rules and conduct have been required by statute.

CHAIRMAN KEENE: Mr. Mountjoy, I appreciate your position on that, but we have a witness, and if you would put questions to the witness rather than making statements, it would be helpful. Or, if you are going to make a statement, don't educate the witness, just make the statement.

ASSEMBLYMAN MOUNTJOY: Okay. You are not familiar with Proposition 9?

MS. SIMON: If you are referring to the Fair Political Campaign Practices, I am not familiar with that in any detail. I would suggest that that governs many of the external relationships that public officials, both legislators and other public officials, have in campaign contributions. It is different from an internal organization of the Legislature.

CHAIRMAN KEENE: Okay, would you like to proceed?

MS. SIMON: Finally, in some instances, state legislatures pass legislation establishing certain legislative entities or processes -- for example, sunset procedures, statutory committees and staff agencies, financial disclosure requirements and open meetings. All of these form a network of guidelines which provide the legislative institution with a measure of certainty, accountability, clarity, order, and structure.

The Gann Initiative seeks to impose by statute many provisions which traditionally, historically, and constitutionally in most other state legislatures are the subject of legislative rule. Legislative rules are formulated by the members to govern the institution's operations in a manner which provides flexibility and reflects political reality.

I would direct your attention to the recent landmark U.S. Supreme Court decision of Immigration and Naturalization Service vs. Chadha. In that decision, the Supreme Court noted the dual power of Congress in its bicameral lawmaking acts and its unicameral acts. Among the unicameral powers recognized by the high court is the power of each house to act alone in determining its own rules and other internal matters. Similarly, the Massachusetts Supreme Court upheld an Attorney General's decision in 1983 not to certify an initiative which, very much like Gann, sought to regulate internal legislative business by statute. The Massachusetts Court rejected the initiative because it dealt with matters of rule rather than laws or constitutional amendments.

ASSEMBLYMAN NAYLOR: Mr. Chairman?

CHAIRMAN KEENE: Mr. Naylor.

ASSEMBLYMAN NAYLOR: Yes, question for the witness. Are you familiar with the provisions in the Massachusetts Constitution limiting the power of initiative there to....?

MS. SIMON: They have a constitutional provision which does state that initiatives shall be -- shall deal with matters of legislation.

ASSEMBLYMAN NAYLOR: Right, and are you familiar with the rather broad provisions of the initiative in California -- in the California Constitution?

MS. SIMON: I am not.

ASSEMBLYMAN NAYLOR: Okay, let me just suggest that there are distinctions between the two powers of initiative that you might want to research when you get a chance, and we can talk about it perhaps under a different heading. But, we are satisfied that the California initiative power is very broad, basically retaining for the people all of the powers that the Legislature itself has with respect to the passage of legislation. And if the Legislature could pass these laws, as it has, so could the people by initiative.

CHAIRMAN KEENE: Okay, thank you for making the point so succinctly. Back to the witness.

MS. SIMON: Let me turn to some of the specific provisions delineated in Gann and comment on how other state legislatures handle these same matters. While Gann addresses a variety of issues, I will primarily focus on three things: (1) the organizing and naming of committees; (2) voting requirements; and (3) the allocation of funds, staff, and other resources proportionately.

No state legislature currently operates with the committee system delineated by statute. Rather, the rules of the 99 legislative bodies provide the necessary instructions for organizing and managing committees. There are, in fact, individual statutory committees...

CHAIRMAN KEENE: Could you get a little closer to the microphone?

MS. SIMON: Okay. There are individual statutory committees in several states, but these committees are usually, but not always, special purpose bodies such as audit and sunset committees.

In most states, leaders, most often the presiding officer or a committee of leaders, determine the size, the ratio of majority to minority members and the specific appointments of members and chairs. Appointments are made by the presiding officer specifically in two-thirds of the legislative bodies. This power is more common among house speakers, where four out of five speakers generally have the power of appointments to committees, while committees on committees is the pattern in better than a third of the 50 state senates.

Proportional representation on committees is not required by statute or constitution in any of the 50 states and most legislative rules are silent on this topic of minority party appointments to committees. Where the legislative rules address minority party appointments, the provisions range from guarantees of proportional representation to grants of appointment authority to the minority party. In 22 legislative bodies, representing 15 states, committees are required to reflect the proportional balance within the whole chamber. The language in those requirements varies considerably. For example, the Pennsylvania Senate language is "shall reasonably reflect" a proportionate balance. In others, it is much more specific instructions including how to deal with fractions of seats. In this latter category are the lower houses in Kansas, Maryland, and New York. In 12 legislative bodies, the minority party, through its leadership or caucus is given explicit authority under the rules to appoint party members to committees. In other state legislatures, consultation with the minority and proportional representation are followed informally though not required under the rules.

I would note that in the blue books that were handed out a moment ago, that there are -- and that blue book is the product of one of our committees out of the NCSL -- there are some suggestions there advising leaders on the selections of members to include, to committees, including such things as proportional representation, consultation with the minority, and the implications of the use of other factors in organizing the committee system.

The question of proportional representation was litigated in an Arizona case, as was noted earlier. The United States Court of Appeals, Ninth Circuit, in its decision, puzzled over such matters as fractions of committee seats, the concept of representation, and the role of the courts in legislative business. The court concluded that from the beginning of the Republic and long before until now, this kind of decision has been committed to the legislative body involved, whether it be the House of Commons, one of the Houses of Congress, or one of the houses of a state legislature. We are not in a position to make a better judgement.

Let me turn to the matter of voting requirements. The standard for most legislative actions is majority vote. State constitutions set out other instances -- for example, impeachment, emergency acts, or constitutional amendments -- where a more stringent standard such as two-thirds or a constitutional majority is required.

UNIDENTIFIED VOICE: Or spending bills in California.

MS. SIMON: That's correct. I was going to go on -- in a few states there are other extraordinary two-thirds majority requirements. Along with California are Illinois and Delaware. To my knowledge, extraordinary majorities are not required by

state constitutions or by statutes on matters of legislative management or organization. However, by their own rules, more than 70 of the legislative bodies...

ASSEMBLYMAN MOUNTJOY: The Gann Initiative, and that's what we are addressing here, the organization, as far as that goes, and the votes for legislative things is not by two-thirds vote. Are you familiar with that? Do you agree with that?

MS. SIMON: Just that the extraordinary majorities are not required in any other state. I mean I recognize that...

ASSEMBLYMAN MOUNTJOY: Well, what I am saying is that it is also not required in the Gann Initiative.

MS. SIMON: My understanding was that the two-thirds vote was required for the adoption of rules. Is that correct?

CHAIRMAN KEENE: Yes, for the adoptions rules only.

MS. SIMON: That is a matter of legislative management. I just commented that that is not the ...

CHAIRMAN KEENE: We will leave that up to the individual conclusions of the members that heard Mr. Gregory's testimony earlier as to whether the two-thirds requirement might not be required in other situations as well.

Mr. Calderon, briefly.

ASSEMBLYMAN CALDERON: Did I hear you say that the requirement in California -- that its budget be adopted by a two-thirds vote in both houses is an extraordinarily extreme standard when compared to budget votes or requirement for votes in other states?

MS. SIMON: That is correct. There are only three other states where budget and tax matters require the two-thirds vote. In some states there are, because of emergency enactment provisions, if a legislature has not passed its budget by a certain date, they may be required to follow-up with a two-thirds vote. But, generally speaking, the two-thirds is an extraordinary standard.

ASSEMBLYMAN CALDERON: Thank you.

MS. SIMON: By their own rules, more than 70 legislative bodies require a vote of at least two-thirds of those elected or present to suspend the rules. In a few states -- for example, Montana, Alabama, South Carolina, and New York -- unanimous consent is required to suspend the rules without prior notice.

Let me turn finally to the question of governance and the division of legislative resources within a legislative body.

The management structure varies greatly among the 50 state legislatures; likewise, the apportionment of staff and other resources differs. In several of the largest states, the legislature is directed and managed by the primary partisan leaders who are responsible for the allocation of resources and staff. For example, in Massachusetts, New York and Michigan, the principal majority party leaders determine the division of resources between the two parties and the staffing pattern for the legislature. In Ohio, where a strong, centralized nonpartisan staff serves the General Assembly, the principal majority leaders then control the division of the remaining resources between each of the Chambers.

In other states -- for example Florida, Connecticut, Washington, Kansas and Wisconsin -- leadership committees are responsible for the determination of staffing levels and patterns either within a single house or for both Chambers.

Proportional allocation of resources is not required by constitution or statute in any state legislature. In fact, however, a number of states routinely attempt to achieve proportional balance in staffing. Personal staff commonly are assigned with little regard to party affiliation, and because of the predominance of central nonpartisan staffing in most state legislatures, minority party members have comparable access to staff resources.

Further, in Connecticut for example, every rank and file member has access to the same staff resources, and each of the four caucuses is granted the same level of staffing. The session staff is apportioned between the majority and minority parties on a ratio approximating party balance. Legislative leaders receive the same number of staff regardless of party.

Another example comes from Wisconsin, where personal staff is awarded regardless of party affiliation, and caucus staff approximate party strength with some additional allocations to the minority parties. Leaders and committee chairs receive additional staff in recognition for their unique responsibilities, but the number of additional staff is modest.

Finally, I would note Pennsylvania, where there is a tradition of dividing resources and staffing equally between the two parties.

(BEEPER GOING OFF)

CHAIRMAN KEENE: That's the indication that the 10 minutes have elapsed. Can you give us a couple of concluding touches? Otherwise, my intention would be to include in full the text of your statement, if it is in writing.

MS. SIMON: Okay, I will just make a couple of concluding comments.

ASSEMBLYMAN NAYLOR: Did we subtract the interruptions and questions?

CHAIRMAN KEENE: No, we did not subtract from the 10 minutes the questions or the responses to questions. We have a very efficient instrument here.

MS. SIMON: So, what is the ruling of the chair?

CHAIRMAN KEENE: A few quick sentences.

MS. SIMON: I will just finish.

In Pennsylvania, there is a tradition of dividing resources and staffing equally between the two parties, with the exception of the presiding officer's account and the offices of the Chief Clerk and the House or Senate Administration, the majority and minority leadership accounts and partisan staffing for committees are the same.

I would emphasize that legislative staffing patterns are influenced by a variety of factors and there is no one factor which appears to be the principal determinant in all states. There is no one structure that ranks best. Whether consciously or unconsciously determined, there are significant tradeoffs that are made between the strengths and weaknesses of each staffing type. Staff increases for committees and members are likely to result in more responsive staff services, but decreased management control. Highly partisan staff structure fosters a competitive and innovative policy environment, but may also result in substantial duplication of staff services. Fragmentation and specialization of staff services often go hand in hand, offering some subject matter expertise, but compounding management difficulties.

I would emphasize that there is no best way to organize and manage and staff a legislature. Gann is unique in terms of the statutory provisions that it would impose on matters traditionally governed by legislative rules and determined by the political processes of a representative body.

I will stop there.

CHAIRMAN KEENE: Thank you very much for acquainting us with practices in other states as it relates to the proposal before us. Any questions of the witness? Thank you very much.

ASSEMBLYMAN NAYLOR: Mr. Chairman, just one. Isn't it true that in Congress, and I don't know whether you studied Congress much in NCSL,...

MS. SIMON: I try not to.

ASSEMBLYMAN NAYLOR: ...but the respective caucuses in the House of Representative choose their respective committee members rather than having Tip O'Neill choose the committee members.

MS. SIMON: Caucuses do play -- I don't think it is exclusively a caucus decision in Congress. The caucus, with the leadership, I think it is a leadership that is used to select the committee members. There is one state legislature where the caucuses, and I think it is similar to Congress, where the caucus do select the committee members, and that is Hawaii, and the organization of the committee structure there is all part of the organization of leadership as well, and there's lots of negotiation that goes on, and essentially out of the majority caucus comes a slate of leaders and committee members. Likewise, the minority caucus elects its leaders and committee chairs in a similar fashion.

SENATOR KEENE: Okay? Thank you for your testimony and your response. We appreciate having you with us. Perhaps you can provide the sergeant, if she does not have it, with the full text of your statement. So it is there. Okay. Fine. We'll incorporate that into the record, then.

Let me take a very brief moment to introduce some of the Assembly and Senate members who were not previously introduced. We have Assemblywoman Maxine Waters with us, Assemblyman Lloyd Connelly, Assemblyman Richard Robinson, Senator Diane Watson, Senator David Roberti, Senator Ollie Speraw, Senator Art Torres. Did I forget anybody? They are all sitting presumably behind their respective signs if they're still here.

Our next witness is Robert Post, and while he's coming forward, I'll tell you that he is Acting Professor of Law at Boalt Hall, UC Berkeley. He's a graduate of Yale Law School, has a Ph.D. from Harvard in the History of American Civilization, was a law clerk to Justice Brennan of the United States Court between 1978, in 1978 and '79, and Chief Judge Bazelon U.S. Court of Appeals, District of Columbia Circuit, prior to that. He practiced law in Washington, D.C. with the firm of Williams and Connelly during the 1979-80 period. It's nice to have you with us, Professor Post.

PROFESSOR ROBERT POST: Thank you, Chairman Keene. Chairman Keene, Chairman Harris, members of the Committee, I've submitted to the sergeant a copy of my written statement. In the spirit of a ten-minute rule, I'll rather briefly summarize it.

SENATOR KEENE: I think that would be most beneficial. We will incorporate it in full into the record.

PROFESSOR POST: Thank you, Chairman. I'm here today to discuss the relationship of certain provisions of the Gann Initiative to the California Constitution, in particular those

provisions of the Gann Initiative which attempt to structure the way the Legislature orders its internal rules and selects its committees. I think that that discussion has to begin, as Assemblyman Naylor pointed out, with an examination of the power of the initiative in California Constitution. It's found in Section 8, Article II, and it gives to the people the power to propose statutes or to propose amendments to the constitution. Notice that there are, then, two kinds of initiatives--those proposing statutes and those proposing amendments. It is traditional California law, recently reaffirmed that statutory initiatives, those proposing statutes, must conform to the provisions of the California Constitution. And if the Gann Initiative is such a statutory initiative, it proposes an amendment to the Government Code and not to the California Constitution.

Now the California Constitution...

SENATOR KEENE: Yes. Senator Watson.

SENATOR DIANE WATSON: Am I to understand that the statutes that must relate to the constitution supersede the initiatives that relates to Government Codes?

PROFESSOR POST: Those initiatives which propose amendments to the constitution, of course, constitute the fundamental organic law of the state, but those initiatives which propose statutes, as the Gann Initiative does, must conform to the fundamental law of the constitution.

ASSEMBLYMAN MOUNTJOY: May I, may I just ask a question?

SENATOR KEENE: Yes. I'll get to you in just a moment. Senator Watson, are you finished?

SENATOR WATSON: Well, I wasn't, I didn't quite hear the end of your response.

PROFESSOR POST: I'm sorry. Those initiatives, like the Gann Initiative, which propose statutes, must conform to the provisions of the California Constitution. Otherwise, they will be set aside as unconstitutional.

SENATOR KEENE: Mr. Mountjoy.

ASSEMBLYMAN MOUNTJOY: You made a statement a few minutes ago that the initiative process in California was given to the people. Is it not in the constitution that the initiative process is reserved by the people for themselves?

PROFESSOR POST: Yes. The statement I made before was what constituted the initiative process rather than genetic, rather than where it came from. I think, believe you're right.

ASSEMBLYMAN MOUNTJOY: It's reserved by the people.

PROFESSOR POST: Correct. Now the California Constitution provides in Article IV, Section 7 that each house of the Legislature may adopt rules for its proceeding, and it further provides in Section 11 of Article IV that either house of the Legislature may select committees. The Constitution, thus, gives to each house the power to make rules, to adopt rules, and to select committees. Notice that that power is different than the power to enact statutes in a variety of respects. Statutes must be adopted by both houses of the Legislature and, unlike statutes, rules and resolutions need not be presented to the Governor for his approval or disapproval.

I'd like to briefly outline each of these powers, the powers to adopt rules and the powers to appoint committees.

SENATOR KEENE: Mr. Naylor.

ASSEMBLYMAN NAYLOR: Mr. Chairman. As you get into that, there's nothing which says that the Legislature has the exclusive power to make rules, is there?

PROFESSOR POST: Well, I guess I would have to know what you mean, what meaning you're putting on the word "exclusive" there.

ASSEMBLYMAN NAYLOR: I mean if we, if we get into the question of whether one may enact a rule by statute...

PROFESSOR POST: I will address the question.

ASSEMBLYMAN NAYLOR: ...then, but I don't see anything which says only the Legislature may make its own rules.

PROFESSOR POST: Right.

ASSEMBLYMAN NAYLOR: It says the Legislature shall make rules.

PROFESSOR POST: Right. It's clearly the case that a statute can do things which a rule can also do. The power to adopt rules was considered extremely important at the time the California Constitution was adopted in 1849, originally adopted. It was considered so important that it was held at the time by the California Supreme Court in a case called ex parte McCarthy (1866) that it was inherent in the Legislature, and that if the Constitution could restrict that power, but the power to make rules for its own proceeding preceded the Constitution and would exist even if the Constitution didn't authorize that power. Similarly, the power...

UNIDENTIFIED VOICE: I like that one.

PROFESSOR POST: It was held, and it was in conformity to the law at the time, and, in fact the present law, present black letter law, that the power to make rules for internal proceedings is so essential to the proper functioning of a legislative body that that power precedes the Constitution, can be restricted by the Constitution, but would exist even in the absence of a specific authorization by the Constitution.

SENATOR KEENE: Senator Watson.

SENATOR WATSON: Are you saying that there is power vested in the Legislature that could supersede the law as it relates to the initiative? The initiative is passed, becomes law. The power is given, then, to the Legislature to make rules that supersedes that given to it by the adoption of the initiative.

PROFESSOR POST: The traditional interpretation of the rule-making authority of each house of the Legislature, the unicameral authority, is that it would exist even in the absence of a specific constitutional authorization. It can be restricted by constitutional terms, but it would exist even in the absence of an authorization.

SENATOR KEENE: Is the theory in McCarthy that the setting up of the institution itself has implicit with it a rule making power?

PROFESSOR POST: That's correct.

SENATOR KEENE: That it characterizes and defines the institution itself.

PROFESSOR POST: That's correct. And that is illustrated by the fact that in the 19th century, before the present, before what is now Section 11, giving the Legislature the power to select committees, was added to the Constitution in 1940. The Legislature, through the rule-making authority, selected committees. In fact, I was reviewing the 1849 rules of the Assembly this morning, and they, by rule, established what standing committee should exist and how they should be selected by the Speaker.

SENATOR WATSON: Does that power only go to a unicameral legislature or...

PROFESSOR POST: It exists within the unicameral authority of each house of the Legislature. Yes. And it does so prior to a specific authorization.

SENATOR WATSON: You say jointly, not individually.

PROFESSOR POST: I'm saying unicamerally. It doesn't need a joint resolution. Each house can separately, by

resolution, constitute a committee, select a committee, and make a rule.

SENATOR KEENE: Is that inherent rule making power of constitutional dimension, or is it something that could be limited not only by constitutional provisions, as you intimated or concluded, but also by statute, ordinary statute?

PROFESSOR POST: Well, I will get to the question of ordinary statute in a second, but as to the first question, first of all it is of constitutional magnitude because it's specifically recognized in the California Constitution, and second, it's of pre-constitutional magnitude because it would exist even in the absence of a constitutional authorization and can be restricted only by constitutional provision.

SENATOR KEENE: Well, if it were not provided in the California Constitution, and this does have some practical consequence, I think, would the inherent power of the Legislature to develop its own rules be of constitutional magnitude?

PROFESSOR POST: Vis-a-vis a statute?

SENATOR KEENE: Yes.

PROFESSOR POST: Well, you see the problem with the question of statutes is that not only do legislatures govern their own proceedings by rules, but they also, universally, including the California Legislature and Congress, govern their own proceedings by statute. The question is: How are such statutes to be interpreted? One might argue, and I've seen the argument made, that if this rule-making authority can be governed by statute, then it's not constitutionally inviolate. I think the difficulty with that way of understanding, what are called procedural statutes, statutes which govern the internal proceedings of the Legislature, is that in the process of enacting a statute, each house of the legislature must vote for the statute, and it is, therefore, as if each house of the legislature has unicamerally and simultaneously enacted a rule. Therefore, procedural statutes can be interpreted as the simultaneous unicameral adoption of rules and, in fact, have been so interpreted by prior cases. I will bring to your attention the case called Chapman v. the United States, which construed an 1890 statute by Congress, which provided that a witness before a Senate committee who did not answer questions could be prosecuted for a misdemeanor, and that statute was challenged, constitutionally challenged, on the grounds that it was an unauthorized interference with the constitutional power of either House of Congress to make its own rules and regulations for the conduct of its business. The court, the District of Columbia Court of Appeals, rejected that challenge saying that a rule is not less a rule because it takes the form of a statute. In other words, procedural statutes are the simultaneous adoption of unicameral rules. Now, it follows from that analysis that either

house of the Legislature can modify a previously enacted procedural statute by the enactment of a procedural rule. Now that was the position in the 19th century of Luther Stearns Cushing. That name may not mean much to you now, but he was the preeminent 19th century authority on legislative practices, and his treatise on the elements of law and practices of legislative assemblies was specifically incorporated by the Assembly rules throughout a number of years in the 19th century, and it was specifically relied on by the California Supreme Court in 1866 and in Ex parte McCarthy. Cushing states, and I quote him now, this is the 1866 edition of his treatise: "The principle that each branch of a legislative assembly has a right to determine its own rules is deemed so important that where it is inserted in the constitution of a state, it has been doubted whether it was competent for the legislature of such state, by law, to provide rules for the government of its respective branches which should bind them and supersede their authority to make rules for themselves."

Now contemporary authority is to the same effect although less qualified. Mason's Manual of Legislative Procedure, for example, which, as you know, is incorporated by reference in the present Senate rules and the present temporary joint rules, states flatly: "The House and Senate may pass an internal operating rule of its own procedure that is in conflict with a statute formerly adopted." Now, there isn't much case law on this, but there is some. In 1975, for example, the Georgia Supreme Court held, in a case called Coggin v. Davey, that either house of the Georgia Legislature could, by unicameral rule, supersede the provisions of the Georgia Sunshine Law. The Georgia Court said: "We do not believe that it can reasonably be argued that the House or Senate cannot pass an internal operating rule for its own procedures that is in conflict with the statute formerly adopted." And, as I'm sure you know, in last December the Massachusetts Supreme Court recently came to a similar conclusion saying that "either branch of the Legislature, under its exclusive rule-making constitutional prerogative, is free to disregard or supersede such statutes by unicameral action."

Now I hope you forgive my setting out these principles at such length, but I think they're important because they establish that the inherent rule-making authority of each house of the Legislature, the inherent power to form committees, cannot be impaired by statute. They can only be diminished by constitutional amendment. And that's particularly true where the power is recognized and authorized by provisions of the Constitution as it is by the state Constitution of California.

ASSEMBLYMAN NAYLOR: Mr. Chairman?

SENATOR KEENE: Yes, I think the import of that struck you about the same time it struck me.

ASSEMBLYMAN NAYLOR: Yes. So that...

SENATOR KEENE: Prop 24 is in trouble, if that's correct.

ASSEMBLYMAN NAYLOR: Is that, does that, I assume, apply to the statutes that the Legislature has enacted and the Governor has signed into law?

PROFESSOR POST: This analysis that I'm giving applies to such statutes.

ASSEMBLYMAN NAYLOR: All right. So that Section 9170 of the Government Code, which establishes the officers of the Assembly, a President pro Tempore, for example, in 9171, which establishes the officers of, I'm sorry, of the Senate and of the Assembly Speaker.

PROFESSOR POST: Could be superseded by unicameral rule.

ASSEMBLYMAN NAYLOR: Speaker not being established in the Constitution of California as such, then the Legislature or the Assembly, acting on its own, could eliminate the Office of Speaker regardless of this statute establishing the Off...

PROFESSOR POST: That's correct.

ASSEMBLYMAN NAYLOR: Office, is that right?

PROFESSOR POST: That's correct.

ASSEMBLYMAN NAYLOR: And similar with the President pro Tempore?

PROFESSOR POST: That's correct. Now the Gann Initiative, as Mr. Gregory noted, the essential thrust is precisely to control the exercise of the discretion of each house to adopt rules and to select committees. Various provisions of the Gann Initiative provide how rules may be adopted by only a two-thirds majority. That, of course, impairs the authority to adopt rules by less than a two-thirds majority. The provisions of the Gann Initiative create committees, say how those committees are to be appointed, say how those committees are to vote -- all of which are matters of internal operating procedure, all of which are diminished by the Gann Initiative. Now, if the Legislature were to enact a statute that had exactly the same provisions of the Gann Initiative, it would be valid to the extent that such a statute would, in effect, be the simultaneous adoption of unicameral rules by each house of the Legislature, but the Gann Initiative cannot be so construed for a number of reasons.

ASSEMBLYMAN NAYLOR: Let me, but it could just as easily...

SENATOR KEENE: Tell me what.

ASSEMBLYMAN NAYLOR: I'm sorry, Mr. Chairman.

SENATOR KEENE: No, that's fine.

ASSEMBLYMAN NAYLOR: It could just as easily, if you adopted such a statue, a single house could ignore the statute, is that right?

PROFESSOR POST: That's correct. That's correct.

ASSEMBLYMAN NAYLOR: So...okay.

PROFESSOR POST: Now the Gann Initiative would not be subject to that check by subsequent unicameral action for a number of reasons. For one thing, it can only be amended by a vote of both houses of the Legislature, and it cannot be amended inconsistent with those purposes unless approved by the electorate and, furthermore, neither house of the Legislature has enacted the Gann Initiative. It's been approved by the people so that it can in no wise be interpreted as equivalent to a procedural statute. Now all that...

ASSEMBLYMAN RICHARD ROBINSON: Excuse me, Mr. Chairman.

PROFESSOR POST: (inaudible)...might be an objection.

SENATOR KEENE: Mr. Robinson.

ASSEMBLYMAN ROBINSON: Doctor, on that point, if the Legislature, both houses concurring, and the Governor's signature, adopted something like the Gann Initiative, that would have the effect, you say, of being unicameral action on the rules, however, and would have force and effect as a result therefrom.

PROFESSOR POST: Yes.

ASSEMBLYMAN ROBINSON: A next legislature, the statute's still there, adopts rules. Those rules would be senior and superior and would be the operating rules irrespective of the statutes. Is that correct?

PROFESSOR POST: That's correct. You see, under present law, no legislature can bind a succeeding legislature.

ASSEMBLYMAN ROBINSON: That's what I was trying to get you to say.

PROFESSOR POST: And in a similar way, no legislature can bind the unicameral authority of a subsequent house. That's the basic principle here.

Now the provisions of the Gann Initiative might be unobjectionable if the Gann Initiative were proposed as a

constitutional amendment. It's not. It's proposed as a statute and for that reason must conform with the limitations in the California Constitution. As I've argued, those limitations are there to protect the unicameral authority of each house of the Legislature to adopt rules and to select committees, and, therefore, to the extent that the Gann Initiative impairs those, it is to that extent unconstitutional.

I think that same conclusion comes by a different line of reasoning. By closely examining Article II, Section 8, which provides the power of initiative, reserves it to the people, Section 8 reserves to the people the power to propose statutes or amendments to the Constitution. Notice, therefore, that it proposes, that it reserves to the people only two kinds of initiatives--constitutional initiatives and statutory initiatives--and an initiative which proposes something that is neither a statute nor an amendment to the Constitution would not be authorized by Section 8. It is also true that the Constitution carefully distinguishes a statute from a rule or a resolution. The distinction cuts in a number of functional ways. For one thing, a rule or a resolution need not be enacted by both houses of the Legislature to be operative, but a statute must. Secondly, a statute must be presented to the Governor before it becomes operative, but a rule or a resolution need not. Therefore, since the Gann Initiative proposes what are rules rather than statutes, it is for that reason, unauthorized by Section 8, an unconstitution for that reason also.

ASSEMBLYMAN NAYLOR: Wait a minute, wait a minute. Mr. Chairman?

SENATE KEENE: Yes. Mr. Naylor.

ASSEMBLYMAN NAYLOR: Where in the Gann Initiative does it propose a rule? Every single -- unlike the Massachusetts initiative, incidentally, which specifically proposed rules, every single measure of the Gann Initiative is a statute or an amendment to an existing statute.

PROFESSOR POST: Well, I agree with you it's cast in the form of a statute, but the question is: What is it functionally? And if it proposes to do, by statute, those kinds of things which are historically done by rules -- For example, you yourself noted, and I can confirm, that in the 1849 rules, of the 1849 to 50 Assembly, it was provided by rule, by Rule 94, that a rule could be suspended only by a two-thirds vote of those members present. That kind of regulation has traditionally been accomplished by rule. I would argue that the reason why Section 8 confines the power of the people to statutes or to constitutional amendments is to preserve the realm of internal governance to the Legislature consistent with the provisions of Article IV which provide the Legislature.

ASSEMBLYMAN NAYLOR: Well, let me, let me just say to you a part of the ballot argument for the provision which adopted the right of initiative. It said it will constitute that safeguard which the people should retain for themselves to supplement the work of the Legislature by initiating those measures which the Legislature either viciously or negligently fails or refuses to enact and to hold the Legislature in check.

PROFESSOR POST: Certainly. By constitutional amendment.

ASSEMBLYMAN NAYLOR: It doesn't, this particular provision does not distinguish between statute and constitution. If the Legislature can enact statutory rules or establish its structure by statute, why cannot the people enact such statutes?

PROFESSOR POST: I suppose my answer to that is that they're not equivalent powers. When the Legislature does it, it's subject to unicameral revision with each succeeding Legislature. When the people try to do that through the statutory initiative, it's not. Therefore, they are not parallel powers, and when the people attempt to do that through a statutory initiative, as opposed to through an initiative that proposes a constitutional amendment, it runs up against other constitutional provisions which tell us that this should be, this should be, this constitutionally should be the domain of power of each house of the Legislature.

ASSEMBLYMAN NAYLOR: Just. I'm a little, I'm a little puzzled by your testimony. Proposition 9, in order to be amended, has to be amended by a two-thirds vote. It has to be, I think, in print for 30 days, or 20 days, or some period of time.

PROFESSOR POST: Similar conditions to the Gann Initiative.

ASSEMBLYMAN NAYLOR: Right. That would appear --. Are you suggesting that we could simply, unilaterally in the Assembly when a Prop 9 amendment bill comes before us, just ignore those provisions?

PROFESSOR POST: I suppose that my answer to that question would be, would depend on whether you construed the Legislative Reform Act of '74, which I think, is that Prop 9?

ASSEMBLYMAN NAYLOR: Political Reform Act.

PROFESSOR POST: Political Reform Act would be construed as a rule. My...I would not construe that to constitute internal operating procedures of the Legislature. Now I grant you there may be gray areas about what is and is not a rule, but the provisions about which I'm speaking in the Gann Initiative fall squarely within what have traditionally in this state, and I would say in most states, been termed to be rules of internal

operating procedure. The solicitation of contributions, the regulation of contributions, has not been, to my knowledge, traditionally construed to be a rule of internal operating procedure, and, therefore, could not be overturned by unicameral action by each house of the Legislature.

ASSEMBLYMAN NAYLOR: Along that same line, then, wouldn't things which the Legislature, in the past, has construed as statutory enactments rather than rules, isn't that a pretty good source of, for the court to decide what is a rule and what is a statute? If the Legislature thought it necessary by statute to establish the Office of the Speaker, for example, and by statute to establish other committees and that sort of thing, why isn't it logical for a court to construe that as statute rather than internal operating rules, which the Gann Initiative refers to, allows the Legislature to adopt and is a separate body of?

PROFESSOR POST: I think that's a good question, and I think that one way of approaching an answer is to say that by enacting it as a statute, the Legislature makes it public in a different sort of way. It gives rights to third parties in a way that it would not to a rule. It makes it enforceable in a way that it would not to a rule. It makes it operative in the interim between sessions in a way that a rule would not be.

ASSEMBLYMAN NAYLOR: How is it, and does it make it more enforceable if the Legislature can then ignore it unicamerally?

PROFESSOR POST: By third parties, as opposed to the Legislature, but the Legislature can ignore a statute, you understand. I mean so we're not talking about about differences in terms of binding the Legislature which go to whether in an absolute sense they're binding. We're talking about whether the Legislature can set it aside subsequently by unicameral action or by, or by the enactment of a subsequent statute.

SENATOR KEENE: You've got about two minutes left.

PROFESSOR POST: Fine. I've gone back quickly. I guess I would want to say, finally, that these conclusions are buttressed by the recent case out of Massachusetts which was in December of 1983. In Massachusetts, the Constitution reserves to the people, also, the power to propose laws and amendments, and in Massachusetts, also, the Constitution reserves to each house of the Legislature the authority to make rules, but in Massachusetts, an initiative was proposed, like the Gann Initiative, which really concerned internal rules of operating procedure and the Supreme Judicial Court of Massachusetts held that since it proposed rules rather than laws or amendments to the Constitution, it was not authorized. The court concluded that the rules of future sessions of the House or the Senate cannot, under the Constitution, be controlled by a statutory initiative, and my conclusion would be that a similar conclusion should be reached with respect to those provisions of the Gann

Initiative which attempt to control the internal procedures and selection of committees of the California Legislature.

SENATOR KEENE: Senator Speraw.

SENATOR SPERAW: So you are saying that if you were a member of the California Supreme Court, in court (inaudible).

PROFESSOR POST: I would vote down along the grounds. I would say "yes."

SENATOR SPERAW: Does any one of the provisions (inaudible) there (inaudible)?

PROFESSOR POST: I've only talked about those provisions which attempt to govern the internal rules of the Legislature. I haven't talked about others which do not.

SENATOR SPERAW I'm saying, though, in the way that it was written, that it is the loss of one provision and that would be the entire initiative.

PROFESSOR POST: Well, you're pointing to the severability clause, and I have not analyzed the affect of the severability clause with respect to other provisions about which I have not talked.

SENATOR SPERAW: Who can answer that?

SENATOR KEENE: The effectiveness of the severability clause I don't know. I certainly haven't analyzed it. I don't know if Professor Stolz has or any of the other witnesses, Dr. Welch, that we'll be having. Maybe we can keep that question in abeyance and see if we can an answer.

SENATOR SPERAW: Answer identifies particular items which you think could be in value?

PROFESSOR POST: Yes.

SENATOR SPERAW: Which you have.

PROFESSOR POST: Well, I've identified them functionally. I haven't gone through, like Mr. Gregory, and cited section numbers. I could do that in the future, if you wish, but I'm giving a functional analysis, not a line by line.

SENATOR SPERAW: What are you doing presently. I noticed your resume stops (inaudible) practice law.

PROFESSOR POST: I'm presently an Acting Professor of Law at Boalt. I teach constitutional law.

SENATOR SPERAW: Would you be interested, I don't know whether or not it's the time, which would be to give your opinion to each one of the items as to whether or not it's valid or invalid?

PROFESSOR POST: We could talk about that, sir.

SENATOR SPERAW: You can talk.

PROFESSOR POST: I'm a state employee and certainly available to...

SENATOR KEENE: Perhaps we could resolve this by having you submit something in the record on those points that we will add to the record.

PROFESSOR POST: If the requests could be specified, of course I will.

SENATOR KEENE: Okay. We'll have staff check with Senator Speraw as to the specifications of the request and...

PROFESSOR POST: Certainly. Thank you.

SENATOR KEENE: Before you leave, I have one question. Assuming that neither or those arguments prevailed with the current court on the question of constitutionality, such that the result were that Proposition 24 were rendered unconstitutional, as you professionally surmise, let me ask this, or conclude. Surmise is a bad word. Let me ask this. The notion of the ostensible restriction on legislative spending for its own support, the so-called contingency fund, do you have any opinions on that?

PROFESSOR POST: I have not analyzed that.

SENATOR KEENE: Have you analyzed that portion?

PROFESSOR POST: I have not analyzed that provision.

SENATOR KEENE: Okay. Thank you very much.

PROFESSOR POST: Thank you, sir.

ASSEMBLYMAN NAYLOR: Mr. Chairman, just...

SENATOR KEENE: Mr. Naylor.

ASSEMBLYMAN NAYLOR: One more question. Isn't it true that the initiative in Massachusetts purported to amend the rules of the house, that is rather than be purporting to amend (inaudible).

UNIDENTIFIED VOICE: ... reductions -- the 30% budget reduction required by the Gann Initiative, that you have not formulated an opinion as to whether or not a budget reduction in the Legislature without a corresponding budget reduction in the Executive Branch and the Judiciary would render the Legislature an unequal branch of government and therefore possibly would be unconstitutional?

PROFESSOR POST: I haven't rendered an opinion about any aspect of that article of the Gann Initiative.

UNIDENTIFIED VOICE: Thank you. I enjoyed your presentation.

PROFESSOR POST: Thank you.

CHAIRMAN KEENE: Preble Stolz.

Professor Preble Stolz is a former Deputy Attorney General. He was an aide to both Governor Edmund Brown, Sr. and Governor Edmund Brown, Jr. He's been a Professor of Law for 20 years and is currently teaching at Boalt Hall School of Law.

Professor Stolz is also the author of a book called Judging Judges, which has met with mixed reviews, depending on which judges were being judged.

Professor Stolz.

PROFESSOR PREBLE STOLZ: Thank you, Mr. Chairman.

I've read the testimony of my colleague, Robert Post. In general, I think he makes a very persuasive case that the Gann Initiative is unconstitutional insofar as it attempts to enact, by an initiative statute, matters which are within the power of each House of the Legislature to regulate by rule adopted unicamerally by each House.

But I should also say that there is no compelling authority that makes that result a foregone conclusion. The issue has not arisen often anywhere in the United States and never before in California. Many of the cases that Professor Post cites are quite old, and the opposite conclusion, I think, could be reached by our Supreme Court without in any way departing from generally recognized standards of legitimate legal reasoning.

Thus, I conclude that the constitutionality of the Gann Initiative can only be regarded as an open question about which reasonable minds can legitimately differ.

That has been characteristic, I may say, of quite a number of politically potent initiatives in recent years. In the

last five years we've had the so-called Sebastiani Reapportionment Plan in 1983; in 1980 the Reapportionment Referenda; and the so-called Victim's Bill of Rights, Proposition 8; in 1978 the Schmitz Death Penalty Initiative; and Proposition 13, the Jarvis-Gann Property Tax Reform. Most of those measures survived the legal challenge and the California Supreme Court, although some have been partially invalidated or narrowly construed.

It seems to me that we have come to expect at least one politically explosive measure on the ballot for each statewide election. If it passes, the measure will next appear on the docket of the California Supreme Court, accompanied by angry mutterings about a politicized Supreme Court, and veiled threats to recall one or more justices should they have the temerity to invalidate the will of the people.

That's a perfectly terrible process. The Supreme Court is put in a no-win game in which, no matter how it rules, it is certain to be criticized, either for caving in to popular pressure or for simply being a lackey to the Democratic Party, because at the moment six of the seven members of the Court are Democrats.

It's also very expensive, not just in public dollars, and they're not trifling, but also in the reputation of the Court and in public respect for law and our legal institutions. Our civics texts tell our high school students that this is a government of laws and not of men; that our judges are professionally trained to be impartial, to treat the rich and poor alike; and to be above politics. That's never been wholly accurate: no human is capable of total impartiality. But our judges try hard and, in my judgement, for the most part do very well.

Occasionally, very occasionally, the highest courts are required to resolve highly political issues. Sometimes they do it very well, as the United States Supreme Court did with the Nixon tapes case. Sometimes they do it rather badly, as the United States Supreme Court did in Dred Scott. But it happens, or should happen, very, very rarely so that popular faith in the impartiality and nonpolitical nature of our bench is not adversely affected.

We're losing that image with our California Supreme Court. And no small part of the reason for that loss is these damned initiatives. If they come, as they sometimes have come, from a frustrated public discouraged by a long course of legislative indifference to their position, I would not feel so strongly. I'm thinking of such measures as Proposition 20, the Coastal Initiative, or even Proposition 13, Jarvis-Gann.

But the modern trend is quite different. The modern trend is for politicians to push these measures, often for very partisan reasons. This is not a criticism of Republicans alone,

although Republicans are obviously involved in this particular measure. I would remind you of what I'm sure you haven't forgotten, that Jerry Brown was elected Governor largely on the coattails of Proposition 9, the Political Reform Initiative, which he sponsored in 1974.

This particular initiative is sponsored, I believe, in large part by the Republican Party. I was pleased to see that a number of prominent Republicans, notably former Speaker Bob Monagan, has spoken out against it, and I hope that more will do so.

I think the people are getting tired of the partisanship which has come to dominate our institutions, and particularly the Legislature. And they're yearning for a return to the nonpartisan professionalism that once made the California Legislature the best in the nation. They would eagerly support anyone, Republican or Democrat, whose record showed a capacity to rise above partisan concerns.

No one who was involved in the progressive movement that brought us the initiative process could have thought that it would be used, as it presently is being used, for partisan purposes. But that is exactly what has happened. It's hard to get the people to vote against a measure on the ground that is an abuse of the process; but surely it is not too much to ask of our political leaders and our editorial writers that they think about this a little bit.

It seems to me plain that the disease of excessive partisanship has infected the initiative process, and that the big loser, or at least a big loser, is our Supreme Court. If there are any winners, other than political campaign consultants, I don't know they are. I don't think the public is.

That's all I have to say on this measure, Mr. Chairman, unless you have some questions.

CHAIRMAN KEENE: Any questions of Professor Stolz?

ASSEMBLYMAN MOUNTJOY: Well, we were talking -- you spoke a little about the Supreme Court. The original absolute brutal gerrymander of this state under reapportionment was, in fact, referended by the people quite handily. The Supreme Court and the Constitution specifically spells out that a referended statute should not be enacted into law.

How do you view the Court's action whereby they simply adopted as their own court plan the very statute that was referended by the people of the State of California and then placed into law as a temporary court plan?

PROFESSOR STOLZ: Well, I would remind you, Assemblyman, that you're speaking of the Deukmejian ...

ASSEMBLYMAN MOUNTJOY: No, I'm speaking specifically, not of the Deukmejian Reapportionment Initiative or the Sebastiani ...

PROFESSOR STOLZ: No, I'm sorry, the Deukmejian Decision. It's called Deukmejian against the (inaudible).

ASSEMBLYMAN MOUNTJOY: Oh, okay.

PROFESSOR STOLZ: That decision came down before the referenda took place. I'm not going to defend the merits of that decision. I think the Court, in its opinion, gave plausible reasons which were legitimate. They were not persuasive to you. I can understand why they were not. I have to confess they were not wholly persuasive to me either. On the other hand, particularly with respect to the Congressional reapportionment, I don't know what else the Court could have done. That's not true of both the Assembly and the Senate. But the decision was a very difficult decision, and it was, again, a decision which the Supreme Court, no matter which way they decided, would have lost. They would have been regarded as political no matter what they did.

SENATOR SPERAW: Mr. Chairman.

CHAIRMAN KEENE: Senator Speraw.

SENATOR SPERAW: I sort of agree with the overview of the entire situation. And I'm not sure that I would refer to them as "these damned initiatives," but you did go on to clarify that they were caused by the inaction of an unresponsive Legislature to public demand. But you did mention that fortunately there were some responsible people, Republicans, who oppose this. And I would like to suggest to you -- you mention in particular one who happens to be a lobbyist now -- and I would suggest to you that there's just a possibility that there's an axe being ground there other than good government. And that is (inaudible) the greater need to manipulate the present system that it would be if the (inaudible) initiative.

PROFESSOR STOLZ: I have more respect for former Speaker Monagan than you do, apparently.

SENATOR SPERAW: Well, but nevertheless, I'm not suggesting anything except that the present system is easier and there are fewer people that have to be reached and influenced than there would be under the changes.

PROFESSOR STOLZ: That may very well be true, but it's also true that if this initiative passes it will be nearly impossible for the Legislature to do anything of consequence.

SENATOR SPERAW: (Inaudible) what you think we're doing of consequence now.

(Laughter)

ASSEMBLYMAN MOUNTJOY: May I ...

PROFESSOR STOLZ: You're holding this hearing. How's that?

CHAIRMAN KEENE: May I ask. Well, Senator Speraw has completed his unfortunate statement, yes.

ASSEMBLYMAN MOUNTJOY: Just to follow up, what in the initiative -- you obviously are familiar with the initiative. What in the initiative would prevent the Legislature from doing anything of any consequence? What part of this initiative?

PROFESSOR STOLZ: It seems to me, Assemblyman, that in the requirement of super majorities is an invitation to a legislative paralysis. And you do have a number of requirements of a super majority. I'm not referring specifically, I may say in that connection, to the suspension of the rules, which it seems to me was a mistake, to amend the rules as was done, I believe, in 1982, right?

ASSEMBLYMAN MOUNTJOY: Right.

PROFESSOR STOLZ: That I think was a mistake. But in general, anytime you require a super majority, as we have for spending bills in California, you invite paralysis.

ASSEMBLYMAN MOUNTJOY: The super majority does not relate to legislative matters. The super majority, as was described by Mr. Gregory prior to this, was a two-thirds vote of those present and voting on the Floor. Today, under the rule change, it is simply 41 votes period.

PROFESSOR STOLZ: That's correct.

ASSEMBLYMAN MOUNTJOY: The protection -- and I want to point this out to you to see if you can address this, the protection, as was pointed out by Mr. Naylor, of the adoptions of rules by two-thirds majority if, in fact, a small minority decided to block the adoption of Rules of the Legislature, the Legislature, as we are today under Joint Rules, would simply operate on the prior Rules of the Legislature. Is that your reading of the initiative?

PROFESSOR STOLZ: I understood Mr. Gregory to say that that was the general parliamentary practice. The general parliamentary practice does not have a precedent for the situation where a Gann Initiative has been adopted and then what do you do.

I find it hard to believe, or at least I would hope, that the California Legislature would not respond to the passage of the Gann Initiative by not adopting any rules thereby defeating the whole purpose of the Gann Initiative.

ASSEMBLYMAN MOUNTJOY: No, the statement that you're making that the Legislature would be virtually blocked was addressed in a paper developed by the opposition that's called "The White Paper," published by Mike Dorais, it has his name on it, the Newspaper Publisher's lobbyist in Sacramento.

PROFESSOR STOLZ: It was also ...

ASSEMBLYMAN MOUNTJOY: That statement is in here, but let me point out -- I want to get to this point: that in fact, law and precedent has it. And that today we are operating on the Joint Rules that were last adopted. We have not yet in the Legislature adopted our Joint Rules, yet we have waived those Rules time and time again. So there is a precedent that if, in fact -- and your statement comes from the point that a small minority could block the adoption of rules; but in fact, the operation of the House would continue under the priorly adopted Rules. That is the law precedent; that is the parliamentary precedent for years and years. And so, in fact, the Gann Initiative does nothing to prevent anything of significance from being passed through the Legislature. Is that (inaudible)?

PROFESSOR STOLZ: Well, I'm not going to argue the point. I do not think that that necessarily follows, that the practice of the past not to adopt the Joint Rules from prior years or not to make a particular issue of it, I'm not sure that can survive the passage of the Gann Initiative. The Gann Initiative changes the Joint Rules in many, many ways. Somebody's got to figure out what's alive and what's dead in the Joint Rules, and they're going to have to be acted on.

ASSEMBLYMAN MOUNTJOY: But the Joint ...

PROFESSOR STOLZ: And I do not think that it would be responsible for the body, either the Assembly or the Senate, not to adopt its own rules following the passage of the Gann Initiative, if the Gann Initiative should pass.

ASSEMBLYMAN MOUNTJOY: Of course not. I think that would be highly irresponsible; however, the Gann Initiative does not change precedent. It does not change precedent, and it does not change parliamentary rules. Would you address that?

PROFESSOR STOLZ: Well, it does in some respects. It does change the composition of the Rules Committee; it changes the vote that is required to adopt rules; it changes the rules for the adoption within the Rules Committee itself: it requires a two-thirds vote of the Rules Committee to do anything.

ASSEMBLYMAN MOUNTJOY: No, not to do anything. See, it only requires a two-thirds vote for the expenditures.

PROFESSOR STOLZ: Well ...

ASSEMBLYMAN MOUNTJOY: Not to pass legislation; not to assign legislation; not to do any of those things that are legislative.

PROFESSOR STOLZ I accept your correction.

ASSEMBLYMAN MOUNTJOY: Okay ...

CHAIRMAN KEENE: Assemblyman Mountjoy, you will have a chance to testify very shortly, so I don't want to count this time against your ...

ASSEMBLYMAN MOUNTJOY: I don't need testimony time. I'm doing it from here.

CHAIRMAN KEENE I think it's important, though, that it be pointed out that the paralysis issue, whether you agree with it or not, goes well beyond adoption of the rules and whether the Legislature has the option of operating under customary rules and procedures, or preexisting rules and procedures, because the issue of minority veto pervades the whole Gann Initiative. And I think at some point those issues will be addressed as well.

ASSEMBLYMAN NAYLOR: Well, Mr. Chairman, I hope they will be, because I think you'll find it's a very limited list. For example, disproportionate expenditures is one area, and that's avoided by simply making the expenditures proportionate, and then a majority vote decides the expenditures. You can cite the others, but there is nothing that impedes the passage of legislation or the action of the body, which was the point that Professor Stolz was making; that somehow there would be a legislative paralysis in terms of developing public policy. And there's nothing that affects those votes.

CHAIRMAN KEENE: Well, since you're somewhat inviting my views as other than Chairman of the Committee, let me just suggest to you that I think paralysis is too mild. I think the perpetrators of the Gann Initiative wish to perform a political lobotomy on state government in California; and that if it isn't declared unconstitutional, that's what will result. And it will not be an institution that I will be prepared to be a member of, or certainly, if I am, be proud to be a member of.

ASSEMBLYMAN MOUNTJOY: Mr. Chairman, I hope at some point you'll detail why you've come to that conclusion rather than simply drawing the conclusion, because ...

CHAIRMAN KEENE: I certainly will.

ASSEMBLYMAN NAYLOR: Thank you.

CHAIRMAN KEENE I certainly will.

ASSEMBLYMAN NAYLOR: I feel as though ...

CHAIRMAN KEENE: Senator Speraw.

SENATOR SPERAW: It seems to me in addressing this (inaudible) of opening the present problems and the reason why there is a Gann Initiative, and we talked about impeding moving legislation (inaudible).

(Gavel)

We're looking at a situation now where (inaudible) under this system (inaudible) of the first. Under this system, one legislator representing 300,000 people can gain as much power, or nearly as much power, as the Governor of the state, who is elected statewide. Now this is the question that we're addressing. Now, tell me whether or not, when one person gains that much power, whether or not that has some effect on the Legislature?

(Inaudible)

PROFESSOR STOLZ: The question is addressed to me; but I have a feeling it's addressed to you, Mr. Chairman. I have the feeling I'm the net in the tennis court, and I don't really belong.

CHAIRMAN KEENE: Well, I ...

SENATOR SPERAW: (Inaudible) what's wrong with the Gann Initiative, but we have to look at what's wrong now.

CHAIRMAN KEENE: Okay, I think you framed the question importantly. You choose to believe that one man has that much power. I think that's questionable. You also choose to believe, or at least assume, that the current leadership of the two Houses does not reflect the power of the Houses themselves as a coequal branch of government. I choose to feel that it does. You choose to feel that it does not for various reasons. But that's as far as I can go, I guess. I guess we view the world differently, and the legislative process as a part of that world differently as well.

Any questions of Professor Stolz at this point?

Mr. Naylor.

ASSEMBLYMAN NAYLOR: Mr. Chairman, you can count this against my later testimony time if you like.

I was struck, Mr. Stolz, by your condemnation of the state of affairs, not the initiative process, but the state of affairs which has led to so many initiatives and put the Court into such an awkward position, causing them to have to pass -- to make decisions which put them right in the political thicket. One, if not the major motive, I think it is certainly the most important motive of this initiative, is -- well, if you go back and look at the initiatives you cited: "all those damned initiatives," as you blurted out, almost every one of them resulted from -- at least that was enacting law, new law -- resulted from legislative inaction. And that legislative inaction very, very frequently -- the Victim's Bill of Rights, Proposition 13, Indexing Income Tax, the Inheritance Tax Initiative -- were proposals killed by the Legislature, by committees appointed by the Speaker and stacked by the Speaker to his philosophical view, and almost all of those statutes would have passed if they had ever been allowed to get to the Floor of the Legislature and allowed all of the members of the body to exercise their representative function.

PROFESSOR STOLZ: Assemblyman, I think we'd be into a long debate, but I disagree with you very deeply. I do not think that's true. It certainly is not true that there's a deep popular outrage at existing legislative structure. The very recent California polls show that nobody even knew what this damned thing was about.

ASSEMBLYMAN NAYLOR: Now ...

PROFESSOR STOLZ: They are totally indifferent to this thing. The people are totally indifferent to reapportionment. They shouldn't be, but they are.

ASSEMBLYMAN NAYLOR: No, I'm saying that the initiative -- all I ...

PROFESSOR STOLZ: You cannot maintain the position that there is a widespread, deeply held, frustrated majority out there. That's just not true.

ASSEMBLYMAN NAYLOR: Well, Professor Stolz, if I led you to think that's what I meant, I misstated myself. What I'm suggesting is that the initiatives that emerged, emerged to enact laws which had been defeated in the Legislature. And that the reason they were defeated was the power of the Speaker to appoint the committees and stack them to his philosophical viewpoint to kill statutes that would have been enacted by the Legislature. The Legislature would therefore have responded to the sentiment, and the initiatives would have been unnecessary, instead of leading to the initiative process and then the Court challenges and then the dilemma of the Supreme Court.

PROFESSOR STOLZ: Well, you're in the Legislature, and you're obviously in a superior position to me to comment on that.

But from my vantage point outside the Legislature, I don't think you're right. I just don't think that's an accurate statement of what's transpired.

CHAIRMAN KEENE: I think the issue has been joined, and we need to move along now.

ASSEMBLYMAN ROBINSON: I want Mr. Naylor to join me on the Peripheral Canal on why he's making this argument, though, so he can characterize that with the Governor's current position.

PROFESSOR STOLZ: Are you done with me?

CHAIRMAN KEENE: Yes, thank you. Thank you very much, Professor Stolz.

Walter Zelman.

Let's see, he's the Executive Director of Common Cause in California, and former Professor of Political Science at the Claremont Colleges in the University of California.

It's good to have you with us.

MR. WALTER ZELMAN: Thank you very much.

I'd like to start by saying that Common Cause has no position, as yet at least, on the Gann Initiative; and yet I've been asked to come here, and I thought I would share some views about how some of the principles we hold apply to some of the elements of the Gann Initiative.

I've already learned this morning that the Initiative may not be quite as extreme as I had expected, in terms of the breadth of the two-thirds vote clause. Nevertheless, I should suggest that Common Cause is generally opposed to two-thirds vote, except on very basic constitutional matters. We believe that the minority has the right to participate and that rules should guarantee that; but the minority does not have the right to rule, or even in our view, the right to veto the will of the majority. Minority rights, in short, are the rights to try to win, not the rights to win.

For these reasons we opposed Proposition 13, and we continue to advocate a constitutional amendment that would eliminate the two-thirds vote requirement on spending, the budget, and tax expenditure items.

I would suggest that there's a certain irony, I think, in what I've experienced over the last few months. As an advocate for Common Cause for many years now, I've always been accused of being the Puritan; being the individual that couldn't compromise; being the outsiders; being the naive party to poli-

tics. And yet it seems that every time I appear before a legislative committee over the last few months, it's Common Cause that is in fact advocating compromise, some kind of moderation, and even some kind of resurrection of the old rules of the game and the old boy network; whereas the great compromisers, the legislators, appear willing and ready to go to the wall, go to war, on virtually everything that comes up.

This proposal, the Gann Initiative, seems, in my view, to fall into a similar kind of pattern. It seems to suggest that there is a breakdown of the possibilities for compromise in the Legislature. And I suggest that few political systems can survive if they can't bridge -- if they can't keep deep substantive differences they may have on policy from spilling over and destroying the consensus on the rules by which the political game is played. These rules generally tend to include strong doses of courtesy, mutual respect and restraint, and above all, flexibility. All of which tend to lead to a willingness on the part of all individuals to accept defeat.

Few rules and few legislative bodies are plied with great rigidity. Indeed, even small doses of rigidity in the rules seem to be able to bog down political processes interminably. At the heart of the consensus on most sets of rules, then, in most legislative bodies is the willingness to bend them.

This crucial consensus on the rules appears to be breaking down in California. In this specific case, the Gann Initiative, the charge, one suspects, is that the majority is abusing the reasonable rights of the minority in the legislative process, most of which have generally been expressed, not in written form by rule or by statute or by constitutional amendment, but through courtesy, through self restraint and through an un-rigid set of guidelines by which individuals in the process relate.

There may be some justice, I think, to the proponents of this Gann Initiative that some of that fair play has broken down in the legislative process. I note from my experience with many Republicans that they feel that they have no role to play in this process as a minority group. And I can't help suggesting that the current redistricting fosters their view of that; that they have no hope, not only of playing a role as the minority, but no hope of gaining a majority.

This sense of helplessness, especially when experienced by a set of individuals who hold very strong political views, and hold them very strongly, can lead to an unwillingness to accept defeat; to an unwillingness, in fact, to accept the rules of the game. And that, I think, is what's going on in the Gann Initiative here.

CHAIRMAN HARRIS: Mr. Zelman, let me interrupt you one second.

MR. ZELMAN: Yes.

CHAIRMAN HARRIS: Your statement is fine. What I'd like to do for most of that is submit that for the record.

What I'd like you to do, if you will, is give us what your perception is of the functional ramifications of the Gann Initiative. You've heard some aspects as to whether or not it may or may not be constitutional. What I'm wondering, from your perspective as a legislative observer and as someone who understands the process of decisionmaking in the Legislature, do you think that there will be any functional ramification that would result if, in fact, the Gann Initiative is held to be constitutional; and if, in fact, it does have its desired intent upon the legislative process?

MR. ZELMAN: I guess I feel that one of two things will happen: Either the rules will be treated with infinitely greater flexibility than they ever were before, and virtually every committee will open up with a waiver of the rules and nothing will happen; or, on the other hand, and this is perhaps the greater danger, the minority will use its rules levers to perhaps affect substantive outcomes; to, in effect, bargain over what will be ultimate substantive outcomes by bargaining over how the money is going to be allocated, or bargaining and using their power in the new Rules Committees to, in effect, cut deals that are really substantive deals over procedural matters. In the extreme, therefore, the Legislature could stagnate and bog down. I suspect something between the two will occur.

I should note -- I haven't heard much discussion this morning of the cut in legislative budget. That's one thing I think Common Cause would safely say that while clearly there may be excesses in the Legislature's budget -- and we've had this argument every since Jarvis; one person's fat is another person's meat -- who is to say where the 30% fat is in the legislative budget? I'm sure there are 120 people who would have different definitions of what the 30% fat in the Legislature's budget was.

I think I'd be very concerned, not only about some arbitrary size cut like that, but, in fact, I would be concerned about what, in fact, the Legislature will cut if forced to cut. My concern is, quite bluntly, that legislators would keep those people close to them that were their best political people, and what would be cut would be the people who were stronger on the policy side. And in the long run, that would not be in the public interest. The Majority Consultants would be kept; the Senate staffs that prepare memos for the committees might be undermined. And that would clearly not be in the public interest. So I think that clearly is an inappropriate approach to legislative budgeting.

CHAIRMAN HARRIS: On the budgeting question, could you tell me this: do you think that it would also have any impact on the ability of the legislative branch to oversee the executive branch? The growth of the legislative staffs, I would think, was a result in the growth in state government at large, and the need to provide legislative oversight to the executive branch. Would that, in fact, be impaired?

MR. ZELMAN: I think that could be impaired. And I might say that the issue, to me, and the issue I think to Common Cause has never been how big the government is or how much the government does. The issue is how accountable the government is. The public in any one year may want to expand government. The public may want to contract government. The public should have that right. If the public chooses to expand government, and doesn't give the Legislature the money with which to do that, then that group that wishes to expand government and wishes government to pursue more aggressive policies and areas will be hamstrung. And what I'm saying, therefore, is that use of the procedure is affecting the substantive capacities to make policy. And that would be an improper reality.

Yes, Mr. Speraw. One question after this. I'd like to ask one last thing.

One of the concerns that I have about Gann personally, but I'd like your response to, is do you think that the Gann Initiative will have any impact on the caucuses of the various parties -- an impact on the process? One of the fears that I have is that the caucuses will become the controlling entity rather than the individual legislators; or the fact that the individuals will be lost to the caucuses by virtue of the control and power that the caucuses have under this initiative.

MR. ZELMAN: I don't know if I have a thought on that. I suspect that the paradox of this is that the proponents of the Gann Initiative are, in fact, trying to rigidify certain procedures which up until fairly recently I think have functioned quite well. And the result will be that if these procedures are, in fact, rigidified, we will have much more breakdown and bog down and stalemate and stagnation; unless, of course, the paradox comes true and the attempt to rigidify the procedures only, in fact, opens up a loosening of the procedures and a waiving of the rules on a constant basis so that the Legislature can function.

CHAIRMAN HARRIS: Thank you. Mr. Speraw.

SENATOR SPERAW: In 1964, we were a part-time Legislature, spending about $12 million and having (inaudible) hundred employees; turning out the same number of bills that year that we turn out at the present time. We now have 2,000 employees and spend $105 million. In your opinion, has the quality of the Legislature improved over that period of time?

MR. ZELMAN: I think without question. The quality of the Legislature....

SENATOR SPERAW: No, the quality of the laws.

MR. ZELMAN: The quality of the laws is for every individual out there to judge. The quality of the legislative process, as far as I'm concerned, has improved immeasurably.

SENATOR SPERAW: But you're not sure whether or not the Legislature itself has improved?

CHAIRMAN HARRIS: That's what he said.

MR. ZELMAN: I said I think the quality of the legislative process has improved enormously. Whether you want to argue that their bills are better, or more in tune with the public mentality or the public's desires, I think is another question.

CHAIRMAN HARRIS: Okay.

SENATOR SPERAW: Some three years ago, the Legislature added 37% to its discretionary fund. It went from, I believe $75 or $80 million to $105 million in one year. Was Common Cause concerned at that time, as you are now, (inaudible) concerned with that? Were you concerned at the time on where the 37% initial increase went all in one year's time?

MR. ZELMAN: No, we had no position on that. We rarely get involved in that kind of a measure, in terms of that kind of allocation.

SENATOR SPERAW: You're expressing concern now about what cuts would be made if this took place. But you're saying you weren't concerned at the time that some 37% was added to it (inaudible).

MR. ZELMAN: I'm suggesting that I wouldn't be upset if the Legislature evaluating its own budget decided that, "we can absorb a 30% cut." And if the Legislature decided to cut its budget 30%, I don't think Common Cause would get involved in that. The question is an outside force, in fact, the public or Mr. Gann, coming in and suggesting that this 30% is an appropriate figure to cut the budget. I'd rather leave that decision up to the Legislature. That's what you're there to do; and I don't think we should be arbitrarily establishing your budget from the outside.

CHAIRMAN HARRIS: Any other questions, Senator? All right, thank you.

Mr. Mountjoy, very briefly ...

ASSEMBLYMAN MOUNTJOY: Okay ...

CHAIRMAN HARRIS: ... (Inaudible) chance to testify.

ASSEMBLYMAN MOUNTJOY: ...very, very briefly.

Mr. Zelman, you alluded to the fact that by the minority having some control over the expenditures of money from the Rules Committee by a two-thirds vote that somehow they could leverage that into an outcome in some other area. I want to point out that Mr. Gregory's testimony clearly pointed out that by a majority vote those expenditures could, in fact, be made over the will of the minority, except that it would have to be proportionately spent. How do you feel about contracts, unilaterally let, without preview of the public, without review of the minority party? And I'm specifically talking about a few contracts that have been in the news lately: the Gus Newport contract; the Gloria Molina contract. Let's talk about those types of things. Wouldn't you feel that perhaps that type of contract may well be the area that would be cut, and not the legislative process; not the policy consultants? Because after all, I think we're all up here to legislate, and we all want good consultants. We all believe in the process.

CHAIRMAN HARRIS: Mr. Mountjoy ...

ASSEMBLYMAN MOUNTJOY: Those are the ...

CHAIRMAN HARRIS: ... let him answer your question.

ASSEMBLYMAN MOUNTJOY: Well, I'm giving him a few things, just a couple of hints on how to answer.

CHAIRMAN HARRIS: Yes, but ask the question, Mr. Mountjoy. You're going to speak next. Do you have any answer to that, Mr. Zelman?

MR. ZELMAN: I know that when one comes before committees like this the simplest thing to do is to get as specific as possible and to try to provide some specific ideas that haven't been suggested yet. The reason I went into a broader sort of philosophical approach to this issue is that the answer is, yes, some of those contracts are probably inappropriately let; and yes, there probably should be some internal arrangements by which there are some checks on those; and yes, as I suggested, I suspect that especially on the Assembly side maybe the majority has gone further than traditional bounds of goodwill, in terms of eliminating that good will, towards minority than I've seen in previous Legislatures in California. However, to say that the response to that is to write down a finite set of rules for all sorts of procedures that would govern all sorts of behaviors, I suspect is going a little bit too much in the other extreme; which is why I suggested -- Here am I, again advocating compromise, when I'm supposed to be the outsider and the Puritan in the system. And it seems to me that there is a need, the more reasonable thing to do would be to make adjustments in the proce-

dures; perhaps to give the Republicans in the Assembly some vice chairs and things like that. And that is the appropriate response to the present situation, not probably this much more rigidified set of responses to a situation.

CHAIRMAN HARRIS: Thank you, Mr. Zelman.

Mr. Mountjoy, you're on.

ASSEMBLYMAN MOUNTJOY: Well ...

CHAIRMAN HARRIS: No, no, no. You're on to testify.

ASSEMBLYMAN MOUNTJOY: Okay, what I ...

CHAIRMAN HARRIS: No, Mr. Mountjoy ...

ASSEMBLYMAN MOUNTJOY: It seems to me ...

CHAIRMAN HARRIS: Mr. Mountjoy. We need to move the meeting along, Mr. Mountjoy.

ASSEMBLYMAN MOUNTJOY: I'll speak when my ...

UNIDENTIFIED VOICE: Mr. Chairman ...

CHAIRMAN HARRIS: Mr. Mountjoy ...

ASSEMBLYMAN MOUNTJOY: Let me just make a request of you.

CHAIRMAN HARRIS All right, Mr. Mountjoy.

ASSEMBLYMAN MOUNTJOY: I would like to allot some of my time, which would be simply to read part of the preamble that Paul Gann put forth, the need of the people to have this reform initiative. I could do that. I would rather, if, with the indulgence of the Chair, ask Mr. Gregory if he could come back, and give some of my time to him. Because there are some specific questions that I think we need to ...

CHAIRMAN HARRIS: Mr. Mountjoy ...

ASSEMBLYMAN MOUNTJOY: ... go into in furtherance with the initiative. Or I could go to the microphone and address any questions the committees may have of me.

CHAIRMAN HARRIS: No, Mr. Mountjoy, first of all, it's your right -- what you're saying is you'd like to submit a statement for the record from Mr. Gann, the preamble to Prop 24?

ASSEMBLYMAN MOUNTJOY: Yes, basically that's what it would be.

CHAIRMAN HARRIS: All right. And then you yield the rest of your time to questions of Mr. Gregory? Is that what you're asking?

ASSEMBLYMAN MOUNTJOY: Yes, I'd like to ...

CHAIRMAN HARRIS: That's fine.

ASSEMBLYMAN MOUNTJOY: Okay?

CHAIRMAN HARRIS: All right. Do any members have any questions for Mr. Mountjoy?

ASSEMBLYMAN ROBINSON: I have one for Mr. Mountjoy.

ASSEMBLYMAN MOUNTJOY: Good.

CHAIRMAN HARRIS: Let's have the questions, and then we'll have (inaudible).

ASSEMBLYMAN MOUNTJOY: Do you want me to go out there, or can I do it from here?

ASSEMBLYMAN ROBINSON: Mr. Mountjoy, in Mr. Zelman's testimony you seemed to take umbrage at the allegation that the potentiality exists for trading issues between divergent issues in return for getting two-thirds vote.

ASSEMBLYMAN MOUNTJOY: Um hm.

ASSEMBLYMAN ROBINSON: And I understood your statement, or your umbrage, that that just wouldn't happen. And I'd like you to explain, if it was not the fact that the Legislative and Constitutional Officer Pay Increase Bill was not tied to reapportionment in your mind and the mind of members of your caucus a few years back, and ...

ASSEMBLYMAN MOUNTJOY: Well, it wasn't tied in the sense that ...

ASSEMBLYMAN ROBINSON: There was no double joining or legal tie, but was it not tied in a negotiating sense?

ASSEMBLYMAN MOUNTJOY: I don't know that it was tied in a negotiating sense from my point of view. There were several members of the Legislature that lost their positions in the Legislature simply not because they were not good representatives of the people, not because they were not doing their job in Sacramento; but simply because the majority party decided ...

ASSEMBLYMAN ROBINSON: Mr. Mountjoy ...

ASSEMBLYMAN MOUNTJOY: Let me answer your question. I have to go into the question.

ASSEMBLYMAN ROBINSON: I wasn't arguing with your belief.

ASSEMBLYMAN MOUNTJOY: Simply because they were -- those seats were necessary to eliminate so that the majority party could, in fact, remain the majority party. The consensus of our caucus was that, "hey, there should be no legislative pay increase." I was never a part of the caucus or any part of that caucus that said, "give us a reapportionment that's fair and we'll give you the pay raise." I just wasn't part of that, so I don't have any real knowledge that that was an occurrence. It occurred at the same time. It occurred that many legislators were upset about the fact that several of our members were disenfranchised. Yes.

ASSEMBLYMAN ROBINSON: Thank you.

CHAIRMAN HARRIS: Mr. (inaudible).

UNIDENTIFIED VOICE: Yes, for my 2¢-worth, I was not privy to what went on in the Assembly caucuses; however, I remember as clear as if it just happened an hour ago, the then minority leader of the Assembly, Mrs. Hallett -- and I'm sure people can ask her for her position if they hate speaking when she's not here. But the fact of the matter is, she informed me, and wanted me to know, why the pay raise bill was not going to pass. And she said, "Quite frankly it's because of our lack of success on the reapportionment bill. This is our only lever. And therefore the pay raise bill is not going to pass." And just wanted me to know, and maybe I could speak to the Speaker, or whoever else was a relevant person. So I mean, it was tied in as clear as any tie could be made. I frankly thought that was improper. And obviously, at some later date we acted on what we thought was the impropriety of the action that was taken at that time. But it was tied in, and I think everybody knows that it was tied in and that it was an improper exercise of power; because those kinds of tie-ins which are not related just, you know, have no business either under the law or under the rules.

ASSEMBLYMAN MOUNTJOY: Let me just address the point that you're trying -- but the point we were making with Mr. Zelman was simply this: there's no power of the minority party to do this under the Gann Initiative, because the Gann Initiative does not prevent the expenditure of Rules by 50% vote of the Rules Committee. A majority vote of the Rules Committee can expend funds. The only difference is that a proportional amount of funds would then have to be allowed to be spent by the minority. There is nothing -- there is no way that the Gann Initiative prevents expenditures of funds by a majority vote of the Rules Committee.

ASSEMBLYMAN ROBINSON: Mr. Mountjoy ...

ASSEMBLYMAN MOUNTJOY: It does not ...

ASSEMBLYMAN ROBINSON: ... what are you going to do with your share of the General Printing Budget? Are you going to print a Daily Journal? You don't have the responsibility for ...

ASSEMBLYMAN MOUNTJOY: Mr. Robinson, it would be absolutely foolhardy for any minority to block the expenditure of funds from a printing of a Daily Journal, from hiring of Legislative Counsel, from hiring of ...

ASSEMBLYMAN ROBINSON: But the Gann ...

ASSEMBLYMAN MOUNTJOY: research analysts, committee consultants, those types of things.

ASSEMBLYMAN ROBINSON: Mr. Mountjoy, you're begging the question. The question ...

ASSEMBLYMAN MOUNTJOY: No, I'm not begging the question.

ASSEMBLYMAN ROBINSON: ... (Inaudible) that budget, that money be expended on a partisan basis; and I'm asking you what you're going to do with your share. I'm not arguing with the point that it can be done by a majority vote. Mr. Gregory's testimony was clear on that point. But what do you do with your share of the money that's used to expend upon a Daily File, a Daily Journal, and chaptered bills and what have you?

ASSEMBLYMAN MOUNTJOY: If we, Mr. Robinson, decided to block the vote of some pencil buying because we thought they were political pencils, then we would have to probably buy our own political pencils.

ASSEMBLYMAN ROBINSON: No. No, Mr. Mountjoy, you are not answering my question.

ASSEMBLYMAN MOUNTJOY: Yes, I am.

ASSEMBLYMAN ROBINSON: It is drafted in such a way that the legislative printing allocation is split on a partisan basis. That means those funds that have been regularly and customarily used for the printing of the Journal will be split on the relative proportion of the parts and representation within both Houses. And I'm asking you, since you have no responsibility -- the minority party -- for actually running the House, how are you going to spend your share of the Daily Journal money?

ASSEMBLYMAN MOUNTJOY: Well, I assume that we would have to spend it for printing of our own Daily Journal if we wanted one, I guess.

ASSEMBLYMAN ROBINSON: Okay.

CHAIRMAN HARRIS: Thank you, Mr. Mountjoy.

All right, Mr. Gregory. Mr. Gregory, Mr. Mountjoy has some more questions he'd like to address to you.

ASSEMBLYMAN MOUNTJOY: I just have a couple of questions. Could two members of the Senate Rules, or three members of the Assembly Rules Committee, have absolute veto power over legislative action -- under the Gann Initiative?

MR. GREGORY: Yes, they could, if the desired legislative action would be to expend funds on a basis which would be not a proportional basis; because -- As you indicated earlier, by a majority vote they can expend funds on a proportional basis. If there's any decision to do otherwise, it would require more than a majority vote to do so. So ...

ASSEMBLYMAN MOUNTJOY: But not for normal legislative action. The assignment of bills to committees, the assignments of committees, that type of thing, is still a majority vote. Is it not?

MR. GREGORY: The assignment of bills would be a majority vote.

ASSEMBLYMAN MOUNTJOY: Let me go back -- I've got one more. Why don't you ask him your question while I'm looking? Ask him -- go ahead. I'm going to look up another question, then he's going to ...

ASSEMBLYMAN NAYLOR: Could I just ...

CHAIRMAN HARRIS: Mr. Naylor, is it to Mr. Gregory?

ASSEMBLYMAN NAYLOR: Yes.

CHAIRMAN HARRIS: Yes.

ASSEMBLYMAN NAYLOR: Mr. Gregory, when you -- just before you sat down you basically said that the beginning of the session would be mess. I think was -- or at least you agreed with that characterization because of -- of what? I don't understand.

MR. GREGORY: Well, it's the interrelationship of the the general principles of parliamentary law that if you don't adopt rules at the beginning of a session, then by custom and usage you have no rules but you look to the rules of the prior session as to how you should operate. And what has happened in the past, of course, is there has been no radical change in the rules from session to session, and so the body sort of flows along, using the rules of a prior session.

Here we have interaction with Proposition 24, which would come in and establish a number of changes in the rules which deal with some very fundamental powers of the body. In other words, the formation of committees, the composition of committees. And obviously, the issue is going to be raised as to whether or not the Legislature can ignore the provisions of Prop-

osition 24 and just not adopt any rules and operate under the rules of the prior session, which would be in contravention of what Proposition 24 would require, particularly with the establishment of the committees, the size of the committees, the jurisdiction, and then how the members are selected.

And I think that that is going to create a great deal of tension between members of the majority party, who obviously would like to operate by the rules in existence prior -- by the prior session; and the members of the minority party, who would be gaining increased rights under Proposition 24. They're going to be saying that, "No, you can't just ignore Proposition 24. You can't just operate by the rules of the prior session. You have to conform to Proposition 24, because it's self-executing, it sets forth brand new rules. And these are the current rules." So I think -- when I agreed with that thing -- I think I said there is going to be this tension, and someone is going to have to resolve the issue as to exactly what rules the body operates under.

I refer then also to the provision in Proposition 24 that gives someone a right to bring an action of mandamus, injunction, or declaratory relief, for violations of the Proposition. It seems to me that someone is going to be aggrieved somewhere in relation to the Proposition. A suit will be filed, and it ultimately -- the judicial system is going to have to resolve it.

So that was the basis of my statement.

ASSEMBLYMAN NAYLOR: But with respect to the establishment of committees, which it seemed to me that you were reacting to as being the biggest mess, why wouldn't the preexisting committees -- I mean, assuming that no rules were adopted, okay. Why wouldn't the preexisting committees, identified as the standing committees in the current Rules of the House, continue?

MR. GREGORY: Well, the continuation of the existing committees might be an easier one to resolve. The Legislature has operated with -- the Assembly has operated with those number of committees for, you know, a number of years. We know there are some committees that historically go back over decades: the Ways and Means Committee, and fiscal affairs; Judiciary; some of the other committees have been around for years and years and years, and probably would continue under any state of facts in the future. But there could be arguments as to whether or not they would continue some of the smaller committees who have a very limited ...

ASSEMBLYMAN NAYLOR: Those are in the current rules, are they not?

MR. GREGORY: They are in the current rules, but ...

ASSEMBLYMAN NAYLOR: Okay, what I want to know is, in the event of no action by the Legislature December 1st, adopting new rules authorizing new committees, why wouldn't the existing committees ...

MR. GREGORY: Well, it was ...

ASSEMBLYMAN NAYLOR: Membership is another question, but the existing ...

MR. GREGORY: ...except that one of the rules that would be continued, if you just went by the rules of the prior session, is the rule that the Speaker, at the beginning of a session, decides, you know, what the committees are, the size of the committees. And then, of course, after the Speaker -- and then, of course, appoints the chairman and vice chairman and members of the committees. And ...

ASSEMBLYMAN NAYLOR: Well, admittedly that would change ...

MR. GREGORY: ...and then -- and then ...

ASSEMBLYMAN NAYLOR: ... but the existence of the committees and which committees exist -- I guess the size -- Does the size determine...

MR. GREGORY: No, you'd have to reformulate the committees, because the committees are not a continuing body from one -- the Rules Committees are unique in the statute; but the normal rule is that a standing committee on a subject matter jurisdiction is not a continuing body. And so when you adjourn sine die from one session and then begin the brand new session, there is no continuing existence of that particular committee. And so ...

ASSEMBLYMAN NAYLOR: But that ...

CHAIRMAN HARRIS: Excuse me, Mr. Naylor.

ASSEMBLYMAN NAYLOR: Yes.

CHAIRMAN HARRIS: I don't mind you asking the witness a question, but I don't want you to get into a debate with him.

ASSEMBLYMAN NAYLOR: No.

CHAIRMAN HARRIS: He's already answered the question.

ASSEMBLYMAN NAYLOR: Yes, I know. I'm ...

CHAIRMAN HARRIS: If he doesn't give you the answer you want ...

ASSEMBLYMAN NAYLOR: No, see ...

CHAIRMAN HARRIS: ... state what you want the answer to be and let's move on.

ASSEMBLYMAN NAYLOR: Okay, well all right, I'll do that. It seems to me, Mr. Gregory, that the committees -- that is the description of which committees? Rev and Tax, Ways and Means, and so on -- would continue, because they're described in the current Rules, and the current Rules would continue. The membership selection would change. The membership selection, of course, they don't start out with members in the new session anyway. The Speaker would have to choose the members under the current way of doing things. In the new session they would be chosen by the Caucuses, except the Rules Committee would choose the chair and vice chair. I don't understand what the mess is.

MR. GREGORY: Well sir, I guess I would respectfully disagree because I think that they are just part of the same process. You're saying the committees would continue. There would still be a Judiciary Committee. But you wouldn't know who the members of the committee are because they have to be chosen. But I ...

ASSEMBLYMAN NAYLOR: Any more than you know now what they will be.

MR. GREGORY: But you don't really know what the committees are. Right now it's that the Speaker will announce what the committees are for the next session, establish the size of the committee, appoint the chairman and vice chairman, and announce the membership. It's all part of the same process. And I don't see how you can differentiate and say on one thing that the committees, somehow, absent members, continues over, but suddenly there has to be a new appointment procedure for the members of the committee. I can see other people coming in and making the same argument, saying all right, if you agree the committee carries over, then the members carry over, and the chairmen carry over, and everything continues the same until there's action. At that point in time, those who would have the authority to appoint the committees are going to argue that's not the case. You know, we now have the authority to appoint the membership of the committee, and we have the authority to have one-half the leadership, be it the chair or the vice chair of the committee. There's just -- the issue is just going to be insurmountable until somebody makes a decision as to what the rule is.

CHAIRMAN HARRIS: Mr. Mountjoy. I just have a couple more, and these questions all revolve around the vote -- the two-thirds vote.

Is a two-thirds vote required at every major juncture of the legislative process under the Gann Initiative? Just as a question.

MR. GREGORY: Unless you were to define what a major juncture is, I, you know -- it's ... Can you define ...

ASSEMBLYMAN MOUNTJOY: Can you tell us exactly what does require a two-thrids vote under the Initiative?

MR. GREGORY: Oh, under the Initiative? Well, the adoption amendment, appeal of the Rules requires a two-thirds vote. Suspension requires a two-thirds vote. Delegation of authority by the Rules Committee to pay bills requires two-thirds vote. Spending on other than a proportional partisan basis requires a two-thirds vote. Any action of the Joint Rules Committee is going to require a two-thirds vote. Those are the ones that readily come to mind.

ASSEMBLYMAN MOUNTJOY: Creation of new committees.

MR. GREGORY: Creation of new committees.

ASSEMBLYMAN MOUNTJOY: Nothing in the legislative process?

MR. GREGORY: I think that's a two-thirds vote of the Rules Committee on that one. Pardon?

ASSEMBLYMAN MOUNTJOY: Nothing on the legislative end of it.

MR. GREGORY: Are you talking about the passage -- the ultimate passage of legislation?

ASSEMBLYMAN MOUNTJOY: Passage of bills and et cetera, et cetera.

MR. GREGORY: No ...

ASSEMBLYMAN MOUNTJOY: Those under the Constitution today.

MR. GREGORY: There's no change in the constitutional requirements, (inaudible) requirements.

ASSEMBLYMAN MOUNTJOY: Then I take it that you would disagree with the statement that would say, "All legislative action would require five votes in the Assembly Rules and four votes in the Senate Rules." Is that -- that simply is not a true statement then.

MR. GREGORY: That's an over-broad statement.

ASSEMBLYMAN MOUNTJOY: Okay. Thank you.

CHAIRMAN HARRIS: Thank you, Mr. Mountjoy.

All right, Mr. Post is our next witness.

Our next witness will be A. Alan Post. Mr. Post retired in 1977 after 30 years as the Legislative Analyst of the

California State Legislature. During that time he earned a national reputation as a nonpartisan and objective budget analyst.

Since retirement, Mr. Post has been a successful management consultant and teacher in the private sector.

Mr. Post, thank you very much for joining us.

MR. A. ALAN POST: Thank you for inviting me.

To save your time, and because you've covered a lot of factual subjects, I'll try to confine my remarks to responding to Keene's Gann In A Nutshell, which I think is a good outline of a number of the issues. And to give you the benefit, if you will, of some opinions and some experience that I think might be helpful in determining what's the best policy for the Legislature and for the public.

First of all, there were some questions about assumptions with respect to excessive spending. There's excessive spending everywhere, and we all know that; but I don't really know why Mr. Gann chose the Legislature. If you were to take any objective review of the expansion of spending by the state, the spending of the Legislature in the last decade and a half has been less than that of the Budget as a whole, and substantially less than that of the Governor. So that if I could, if I were having my power to reduce all three of them, I would do it in a manner that probably would differ from any of the rest of you.

I don't know why he chose the magic of 30%. I feel like Mr. Zelman, that if, in this environment of a partisan Legislature, you made that kind of a cut, it would be made in a way that would not be most appropriate; that you would probably expect political operatives to be the ones that would be kept; and I think you'd lose a lot of the extraordinarily well crafted and valuable information that I hear given now before committees that we didn't used to get. I sat through some of them in the last two or three weeks, and I was tremendously impressed by the quality of information that was fed into that particular committee on that particular issue. After that was done, there was a lot of expressions on the part of the members that reflected their political concerns and their relationships with their constituents and their districts and so on, and that's part of the process too. But I think that it would not have been nearly as productive if it had not been that you had that kind of high paid, well-trained and qualified staff doing work for you.

As to the question of partisan domination, I think undoubtedly it will increase. My views, to some extent, are like those of Mr. Zelman and Professor Stolz. I think that partisan domination has been lacking to a large extent in California. I was thinking last night that I could recall having served under some 12 different Speakers. Some of them were a lot better than others: a couple of them got indicted; some of them were appointed to the appellate courts; they ranged in a very wide variety.

But I don't think that you necessarily, because of these problems that you have, should change the basic structure of the powers of the Speaker. Not that that can't be done. Not that you couldn't do it more nearly the way that it's handled in the Senate. But as I watch the frustration of the Legislature and its delays, and all of that, I sometimes think that what you need is stronger leadership, not less leadership.

A good part of this is brought about by the two-thirds vote on the Budget, the two-thirds vote on taxes, which I think coupled make it extremely difficult for the majority to do a reasonable job of hammering out a majority rule. The delays that I've seen, I think are to a large extent for that reason. And while I -- I just think that leadership, therefore, is probably deserved in every way that you can possibly get it.

And what you are doing by putting this additional overlay of minority control on the whole body of the Legislature will be very much to your disadvantage and very much to the disadvantage of the public. I think in the last analysis it will tend to push, through frustration, and through the other delays and so on that come with enforcing a stronger minority vote, minority control, more measures to the initiative.

And I really don't believe that -- although there's a very significant place for direct democracy, I don't believe that the use of the initiative more than it has been is desirable. I think, on the other hand, that we overuse it; that there are measures that are badly drafted in the initiative; and they are sold on the wrong basis; that they are funded in the wrong way. And all of the things that you can charge against the Legislature about spending money and listening to special interests is duplicated and, in fact, is enhanced by the very nature of the initiative process. And it ought to be used very selectively. And I think what you're doing here is an initiative that will, in effect, increase the use of the initiative, and I don't really think that that's good for the Legislature or for the people.

Let me say that while you've had opinions on the constitutionality -- I won't comment on that, except to say that I agree very strongly that there is a significant policy question here as to whether the Legislature should not have the right, and needs to have the right to set its own rules. After all, the Legislature is the heart of a democracy in my view. It has all of the problems of a democracy. You can't get 120 people, with their own constituencies and their own problems, and not get a bad press. We've known that. It's been historical. Everybody that's been a pundit through the years, or a joker, has made jokes about the Legislature. But believe me, the Legislature is the heart of a democracy and ought to be a majority rule, in my view.

And I think that if you let others, through an initiative process, set the rules under which you operate you'll,

we will rue that day because I don't think that it is the right way to do it.

Now we all know that I have been teaching policy now at USC and UC and others, and I am learning something about it. One of the roles of policy is keep issues away. It is not only to deal with issues, but you see it every day that you try to keep issues from being brought to the surface and dealt with. And that is one of the things that concerns me about the two-thirds vote and the fact that particularly when you compound it with this Rules Committee change that you can have a very small group of people in a caucus that has no direct relationship to the authority and the rules and the governance of the body simply sending out a message expressing it through the votes of the Rules Committee that nope, we're not going to discuss that. Nope, we're not going to discuss that and that government will be more and more -- it will be a matter of not only dealing with issues, but of keeping critical, desirable issues from being dealt with. I had to live with that during the days that we had the terrible cancer in the Legislature of Artie Samish and the bad administration and law concerning liquor administration. And it was almost impossible even though I tried on many occasions to get that issue before the Legislature. A very small block said, "We don't talk about the Board of Equalization" and until you had somebody with the genius of Cap Weinberger to come along and break that open it would probably still be festering. So, I am concerned.

When I came as, worked as, Legislative Analyst, we were almost monolithically Republican. There were very few Democrats. And I can see now that turning those tables a very small group of Democrats, were they of such a mind, could through that kind of a caucus process, keep all the issues that ought to be dealt with, that the Republicans might have felt had to involve a change in the statute, a change in the way you do business, and simply have stopped that. So, it's a question of are you going to change the system, whether you're Republican or whether you're Democrat, that makes it so much more difficult to function. I think that instead of addressing the issues that Mr. Gann states in his ballot argument of closed sessions, of boss rule and that sort of thing, I think you would be increasing it in a marked degree by this. And you would be pushing government away from the Legislature, less into the open, transferring that power more to the executive branch of government, giving problems to the executive government because you are so important in terms of your relationship with it as you became more and more partisan.

I don't see how I could have run the kind of an office that I did under this setup. In other states where they have gone this way, they have split the staff in two, you have to be partisan in the way in which you pick and choose and deal with issues. We didn't have that. We had the opportunity to only say: "Is this an issue that the Legislature ought to deal with? Can we research it legitimately and objectively?" And that is

all that the Legislature asked of me. I'm glad I didn't have to say how would my partisan committee, how would my partisan staff deal with an issue of this kind in terms of the partisan issue that would just surround you in every way in which you did your job.

Maybe I have talked too long Mr. Chairman, but...

CHAIRMAN KEENE: Senator Speraw had a comment or question.

SENATOR SPERAW: (Inaudible)... I think what you were talking about is that we have raw power at the present time, and I think what you are suggesting is that we maintain that raw power or even perhaps increase it.

MR. POST: I am not saying that you have raw power, but there is a lot of power in the hands of the Speaker. And I said that I thought that it would be responsible to change, if you felt that that was necessary, to the Senate way of doing it. But, on the other hand, I believe very strongly that power is needed to lead and if it takes raw power -- I've seen Jess Unruh on the floor on the Assembly exercise what, at the time, I thought was raw power. But, when I saw the consequences of that, and I thought about the environment in which he used that power, I decided that he had used it not in terms of the way in which he did it perhaps as judiciously as the way it should have been done. But, I thought he used it properly and rightly because we were in a stalemate where somebody had to step out. He didn't have to lock them up all night -- I thought that was a bad act -- but to have taken the lead the way he did was what we needed. And I can understand how you get frustrated when you have a very strong negative authority saying we just won't move. And so people get exasperated. But, I wouldn't throw in the sponge on the whole system because from time to time you see raw power.

I think you would see raw power in a caucus. I would rather see it out in the open on the floor of the Assembly than where...I would be unable to watch it. However it might be used in the caucuses, used in conjunction with, I think, that enhancement of authority and power that comes with the two-thirds vote in the Rules Committee. And I think you ought to correct that not by changing structurally the system, but if you don't like the way a Speaker behaves, you've got the majority vote to replace him if that's what you are worried about. You've done it over and over again.

SENATOR SPERAW: But aren't you forgetting that with the raw power you are talking about placed in the hands of one person, regardless of who it is, and let me add, the idea would be the same whether it was Republican or Democrat. We are talking about a system which allows what is happening to happen. When one man because of his possession of powers can raise millions of dollars (inaudible)... therefore does not represent

the people of the district he represents, but comes up (inaudible)... one individual, we are talking about a system of raw power that permits that type of thing. Now, I agree with you: Wouldn't it be wonderful to have a benevolent dictator?

MR. POST: I didn't say that.

SENATOR SPERAW: Look perhaps to Jess Unruh at times, used a great deal of discretion and did a very fine job with the raw power. But that would also depend on the individual who wields that power, and I am talking about a system that I don't personally agree with that system, that allows one person to apply that power (inaudible) then I have to depend on what kind...(inaudible).

MR. POST: Senator, that one person is elected by majority rule of the house, and that is the majority that was elected by the people at the ballot box.

SENATOR SPERAW: You are overlooking how that one person is able to make sure that they get elected, and you are overlooking the fact that because of this system the entire house is paralyzed almost the entire year because of the battle within and over that position of power.

MR. POST: I am not overlooking it and as you may know I was a co-sponsor of an ill-fated initiative using the process to try to do something about the, what I think, is an inordinate amount of money that pervades all of the election process. And I don't speak only of the Legislature, but wherever there are elections today, we spend too much money, in my view. And although it is an extremely difficult problem to deal with, I think that that has to be addressed. But, I don't blame the Speaker for that. I think Bill Richardson, Senator Richardson, has been collecting money, lots of people collect money. That's the name of the game. And what you're going to do there is to get after, in some way, a very difficult way, of limiting how much money is in the election system, but I don't think that you do that by making -- by pushing the business of the Legislature underground. I have had too much experience with the state legislatures of the eastern states, and I have always thought that California was a good government state. We dealt with the bills; we had open hearings; it went to a vote, and I can tell you what those legislators about the way they operated out of caucuses and on raw power just dropped bills into the wastebasket whenever they wanted to, and I don't want to see that happen in California. It may not happen here with this initiative, but the more you move toward partisan caucus driven government, the more you are likely to get that kind of raw power. And that would be a sorry day, I think, for all of us.

CHAIRMAN KEENE: Mr. Calderon.

ASSEMBLYMAN CALDERON: I just wanted to clarify what seems to be the substance of your testimony with respect to raw power, but let me see if I understand it. You are saying that there is power that is exercised, but you are also saying that the individual members abdicate what individual power, if any, they have to one person by a majority vote. Is that what you're saying?

MR. POST: Well, to some extent I think that is what results, because of the money issue as much as anything else. I think it corrupts everything. You know how I feel about that.

ASSEMBLYMAN CALDERON: Sure.

MR. POST: And I think -- let me go back. I've talked to both the Speaker and the President pro Tempore about this some years ago where I said it seems to me that what's happening is you get these individual constituencies, the people that go out and raise money on their own. They owe nothing to the Legislature in terms of allegiance because they can say, "I got my own money, I got my own constituency." You know, the hell with you, the President pro Tem or the Speaker, I don't need you. And they were in effect doing that. And I said it must be very difficult for you to exercise now, with all the political operatives that are out here, the kind of leadership that the Legislature needs. And they exactly right. It is extremely difficult. So now, since money is the name of the game, and as legislators have told me, "I wake up in the morning thinking about where am I going to get that much money, and I go to bed at night thinking about where am I going to get that much money." Somebody who can go out and help them get that money and then is smart enough to want to put it in those campaigns where he can get the greatest strength for his party is just playing the game the way it is going to be played. You don't change that this way, you change it the other way.

ASSEMBLYMAN CALDERON: Okay, now I understand what you are saying. What you are saying is -- I think I understand what it is you are communicating. The fund raising, the campaigning, the electioneering, and the politics is an offshoot of what we do up in the Legislature, but the decision of each individual member to vest, to a certain extent, their vote into one Speaker and that Speaker has the power to exercise in the legislative process, is not in and of itself a bad thing.

CHAIRMAN KEENE: I am not sure that we should proceed too much further along these lines until you get a complete consensus on what is being said.

ASSEMBLYMAN CALDERON: Well, we are talking about raw power, and I just don't want to confuse the issues. We've got problems, just like you said, the democratic process is not perfect, and we are a microcosm of this greater state. I just...

MR. POST: It hinges to a certain extent to where you divide leadership with so-called raw power. What I am saying is that the Legislature needs strong leadership. I would hope that they would move in the direction of conciliation where there are rules and trying to get consensus wherever possible, but it doesn't always work that way.

That's what I said at the outset. I have worked under some 12 Speakers, and some of them were very conciliatory and some were not. But, that's the way in which leadership operates.

ASSEMBLYMAN NAYLOR: You said it better than James Madison said it except that he said it 200 years ago.

MR. POST: He said it a lot more succinctly, a lot more brilliantly, but I thought when you were reading that, I said I wish I'd said that, but I'm glad I'm still alive to say it today.

CHAIRMAN KEENE: Mr. Naylor.

ASSEMBLYMAN NAYLOR: I'm sure that it was only because you studied Madison carefully that you can say it as well as you did, right?

MR. POST: Yes, I have. That's right.

ASSEMBLYMAN NAYLOR: You said that in effect that you feared more initiatives that the Legislature would be hamstrung by the minority and it would lead to even more initiatives. I don't understand what provision in this initiative you are referring to when you talk about the ability of the minority to impede addressing of public problems. That seemed to be the implication of your remark -- that it would be lead to even more frustration of the legislative process.

MR. POST: I think that there would be more frustration in the administration of the work in the Legislature through the Rules Committee. I really think that the delegation of the authority -- my understanding is that you have literally thousands, almost, of pieces of paper a month that go through. It is a very large organization with a lot of expenditures, with a lot of contracts, personnel matters, and so on, very complex. The idea, as I visualize it from a management standpoint, that the Rules Committee is going to have to sit there and not be able to delegate as it has in the past matters that are immediately before it would mean that you would be spending an inordinate amount of time doing things for which you are wasting your time.

ASSEMBLYMAN NAYLOR: Why wouldn't -- I mean we now, we just, the Rules Committee under a Willie Brown enacted reforms in concurrence with the Republicans now assigns all bills to committee. That power used to reside in the hands of the Speaker alone. We have a consent calendar in which the vast bulk of bills are reviewed by staff, staff from both parties, put on the

consent calendar, and then it goes out on one vote. It takes about ten seconds. Why don't you think that would happen with respect to 99% of routine...

MR. POST: I'm afraid that it would happen and that was a point that I intended to make. I don't believe in big consent calendars where you thereby don't take the responsibility.

ASSEMBLYMAN NAYLOR: Well we don't have the responsibility now because one person...

MR. POST: ...Oh yes, I think you do. I think that you could hold accountable -- if I were the chief administrative officer of that house, I think you could hold me accountable the same way you held me accountable for my office.

ASSEMBLYMAN NAYLOR: Do you know Lou Papan?

MR. POST: Well, you know you are talking a system and not individuals. I really think that, you know, we were critical of the Department of Finance at one time because that's the way they were handling all this paperwork or simply eventually having a clerk sit there and stamp it all. And we said, you know, that doesn't do anybody any good. Nobody knows what's going on. You purport to hold him accountable, you purport to hold the director accountable, but he never sees any of that. Instead, it is just a clerk.

Now, if you do that by consent calendar of sitting and meeting and doing that, I think you don't hold the administrator fully accountable, and you cannot hold yourself, truthfully, accountable either. And I think that that is really a poor system. I would rather have these issues put on the basis that you tell the administrative officer I want you to inform us of certain kinds of things and bring them before us. And if he doesn't you fire him. That's what I used to tell my committee -- "If I don't do it the way the Legislature expects me to do it, you fire me. You hold that, but let me do my job." I don't think you're doing that.

ASSEMBLYMAN NAYLOR: But, of course, if the minority has no way of finding out what the administrator is doing then, there is no accountability of the administrator, at least from that standpoint.

MR. POST: I find it hard to believe that, but you are closer to it than I am, Mr. Naylor. I just don't see why that should be.

ASSEMBLYMAN MOUNTJOY: I should read him a Jefferson quote.

CHAIRMAN KEENE: Thank you very much for your testimony, Mr. Post.

ASSEMBLYMAN MOUNTJOY: You know you were interested in the Madison quote, I just wrote out a Jefferson quote here that I might hand you.

> All to well, bear in mind, that the sacred principle that though the will of the majority is in all cases to prevail, that that will to be rightful must be reasonable, that the minority possesses their equal rights, which equal rights law must protect and to violate would be oppression.

That is a Jefferson quote, so...

MR. POST: My only point would be that I truthfully believe that the Gann Initiative makes it harder for both of those objectives to be met. I truthfully believe that. I think that you hamstring yourself; you push these matters underground, and you do yourself and the public a real disservice by passing this kind of a constraining and I think ill-conceived proposition.

Thank you very much.

CHAIRMAN KEENE: Thank you very much for your testimony. Mr. Naylor, you are up next.

ASSEMBLYMAN NAYLOR: Yes, Mr. Chairman I am going to be mercifully brief. I have a prepared statement that was distributed to the committee, and I would like to be included in the record.

CHAIRMAN KEENE: Okay, we will submit the text of that into the record. Does the Sergeant has a copy of it?

ASSEMBLYMAN NAYLOR: I think that I would just like to make basically three very quick points. I don't think that there is anything particularly radical in this initiative. The testimony regarding the practices of other states indicates that proportional representation, proportional division of resources, minority party appointment of their members to committees is a practice that is reasonably wide spread. And most of what happens in the Gann Initiative simply insures that where it is not insured in the current system.

The issue of the two-thirds vote on adoption of rules -- we've been over that at length. I just might point out that if it is a good idea, as it seems to be thought of in the vast majority of Legislatures to require a two-thirds vote to suspend rules, then in order to prevent that provision from being gotten around quite easily by amending rules with the majority vote or adopting new rules at the beginning of a new session by majority vote you need the two-thirds vote requirement. The only penalty from the potential obstruction of a minority is that you do not

adopt the rules and you continue under the preexisting rules and that is not much a penalty.

On this general issue of the responsiveness of the Legislature and the initiatives that we've had over the years, it is our contention that what we have had is a kind of tyranny of the minority. The Speaker is elected in caucus for all practical purposes. The previous speaker, Mr. Post, talked about taking it out of the light of day. Well, as a practical matter, the majority caucus does run things under current rules and obviously majority votes should prevail. The key decisions are not taken in the light of day, they are taken in caucus. And the caucus agrees usually, but not always, but usually to support the person who receives the majority vote in caucus for Speaker and that person is then elected Speaker.

Now that Speaker has the power under current rules and frequently exercises it. I was happy to see the Chairman of the California Teachers' Association here earlier. I am sorry we are missing his testimony. Frequently he exercises it to appoint committees which do not reflect the majority view of the house, but reflect rather the majority who elected the Speaker, the majority of his caucus, or a minority of the house.

If you look at the initiatives in the last ten years, most of them have been initiatives to enact into law things which would have been enacted by the majority of the Legislature, had they ever been allowed by the committees to get to the floor. The committees not reflecting the majority block those measures. I recited them earlier. And the purpose of this initiative...

ASSEMBLYMAN ROBINSON: Mr. Naylor, you left the reapportionment commission off that list. The one the voters just killed last year.

ASSEMBLYMAN NAYLOR: That was never put on the ballot by the Legislature, that's true.

ASSEMBLYMAN ROBINSON: And it wasn't killed by committee either.

ASSEMBLYMAN NAYLOR: That's true.

ASSEMBLYMAN ROBINSON: But it was defeated by the voters, was it not?

ASSEMBLYMAN NAYLOR: Yes, yes...

ASSEMBLYMAN ROBINSON: Isn't the same concept being supported by the Gann Initiative?

ASSEMBLYMAN NAYLOR: That's true. As was, I suppose, the bottle bill initiative -- defeated in the Legislature, defeated by the people. But, my point is that the power of the

Speaker to thwart a legislative majority is to me the biggest democratic, small "d", abuse currently and the Gann Initiative would have its most positive impact by creating committees that are more likely to be representative of the majority of the Legislature by giving the minority party proportional, not the power to block, but proportional influence on the legislative process. And I think that would largely address the frustration felt by those who have resorted so often to the initiative process in the last ten years.

I think that I am going to stop with that, Mr. Chairman and just submit the rest of my statement for the record.

CHAIRMAN KEENE: Okay, in that case I will contain my refutation of the comments that you've made and put that over to another time as well.

We will adopt the text of your remarks and call on our next two witnesses; Mr. Daniel Lowenstein and Robert Welsh.

Mr. Lowenstein is currently a Professor of Law at the University of California, Los Angeles, and Professor Welsh is a Professor of Political Science at UC, Los Angeles (UCLA), and we would like to hear from you both perhaps together -- is that feasible?

MR. DANIEL LOWENSTEIN: Thank you Senator Keene, Assemblyman Harris and members of the committee. Mr. Hodson told us that you were going to introduce us as Dan and Bob, the Dancing Bruins. I am glad that the membership has a little more judgment than the staff perhaps.

My name is Daniel Lowenstein. I am a Law Professor at UCLA and, as I think the members of the committee know, I previously served as Deputy Secretary of State and Chairman of the Fair Political Practices Commission.

First of all, I would like to commend the committees for conducting this forum today. I have been very concerned about the frequent course of initiative campaigns being dominated by the spending of large amounts of money in which the issues frequently get lost. If we could get the media to do a better job of covering these things, perhaps the quality of the campaigns would improve.

Now there are many lawyers who believe, and I think that I am one of them, that Proposition 24 would be declared unconstitutional if it is adopted. Professor Welsh is going to address that question and in my testimony I am simply going to assume, for the sake of argument, that it is constitutional and that it will go into effect if it is approved.

I am opposed to Proposition 24 because I believe its main thrust is an assault on the principle of majority rule and a

handing over of more power and influence to special interests. In both of these respects, Proposition 24 will devalue the votes of individual Californians.

Proposition 24 is an assault on majority rule because it divides effective power so closely between the two major parties that it will make relatively little difference which party wins an election. This will reduce the responsibility of the majority party to the electorate, since they cannot be blamed for what they do when their majority status does not give them effective control of the Legislature.

Now I have heard some of the discussion today, and I guess there is some dispute as to exactly how far Proposition 24 goes in that direction. I have enormous regard for Mr. Gregory, and I also think that the fact that he holds the position he holds will give his views even more weight.

In Section 9912 (b), which refers to the Assembly Rules Committee and the language is the same for the corresponding section for the Senate Rules Committee, it does say that no one shall have the power to perform any action on the behalf of the committee without... any action, and then it specifies some examples; without the express authorization of two-thirds of the total membership of the committee so that it seems to me that certainly, if read literally, the meaning of this is that everything that the committee does must be done by two-thirds. Now, whether it will be interpreted that way I don't know. But, it does seem to me its thrust is counter to majority rules.

ASSEMBLYMAN NAYLOR: Mr. Lowenstein, just so you don't think those of us who support the Initiative have that intent, let me make, for this record, clear, in case it should come up in the litigation and suit, that the power to delegate is what is subject to the two-thirds vote, not the power to act. All the other actions are majority vote.

MR. LOWENSTEIN: Well, I do think that's a possible interpretation. I don't think that this section is very clear. I don't think that that is a necessary interpretation. I think that what I would simply want to say is that the stated purpose of the Proposition seems to me to be in the direction of taking power away from the majority party. Now, if it turns out to be relatively ineffective, I think that will be better, because I don't agree with the stated purpose. But I don't think it's much of a reason to vote for this Proposition.

ASSEMBLYMAN NAYLOR: No. Mr. Chairman ...

CHAIRMAN KEENE: Yes, Mr. Naylor.

ASSEMBLYMAN NAYLOR: In terms of that particular provision, the power that's taken away is the power of a single person to enter into contracts -- about which there has been much pub-

licity and not much comment, interestingly, in this hearing -- on his sole authority, such as the contract with Richie Ross, and so on and so forth. But in order to delegate that kind of contract, you'd have to have a two-thrids vote. In order to make the decision, you'd have to have a hearing and a majority vote of the Committee. Now, in what respect does that undermine the power of the majority, other than to throw some sunshine onto the contracting process.

MR. LOWENSTEIN: Well, I agree that if you interpret the ...

MR. NAYLOR: I thought that you were for sunshine by reputation.

MR. LOWENSTEIN: If you interpret the provision to apply only to delegations, then it seems to me that the Proposition is not going to be successful in accomplishing many of the things that it purports to do. However, that section, whether it applies to delegations or it applies to actions of the Committee, certainly is not limited to contracts. It says "any action." And then contracts is just given as one example.

Well, I've talked about the majority rule question. The other question, which perhaps has not been aired as much today, is the question of special interests. And I believe that Proposition 24 will improve the position of powerful special interest groups in two distinct ways.

First, it will do so by its indiscriminate cuts in the legislative budget.

There are abuses, in my opinion, in legislative spending, particularly in the employment by both parties of individuals chosen for their campaigning skills rather than their expertise in public policy questions. Over the years, the Legislature has reduced the magnitude of these problems, but in my opinion, it has not eliminated them. But nothing in Proposition 24 guarantees that it will have the slightest effect on these or other abuses.

Faced with hard choices about which staff members to cut, legislators, who I think are generally fine men and women but are not saints, might well choose to save the most politically valuable individuals at the expense of those with high substantive proficiency.

Why should this be of great concern to the average citizen? Legislators do not have the time themselves to become experts on most of the complex matters they deal with. They have to rely on others for the information they need to form judgments.

It is commonplace to observe that the interests represented by lobbyists in Sacramento are extremely diverse, but these interests are not represented equally. The vast majority of lobbying expenses are incurred on behalf of specialized groups, such as business, the professions, labor, and agriculture. There is absolutely nothing wrong with these groups asserting their interests, but these interests sometimes conflict with those of the average citizen.

Who can provide the citizen's side of the story to balance the presentation of the lobbyists? All too often, the only answer is a legislative staff member. If Proposition 24 is adopted, that staff member probably won't be there.

The second reason Proposition 24 is a bonanza for special interests is that it drastically weakens the power of the leadership.

Special interest groups can use campaign contributions and other methods to bring enormous pressure to bear on the Legislature. It takes power to countermand such power. A strong Speaker and President pro Tem can often stand up to the special interests, when individual legislators cannot. Those who believe the power of special interest could not possibly be greater than it now is in Sacramento may be in for an unpleasant shock if Proposition 24 passes.

Supporters of Proposition 24 seem to believe the leadership has dictatorial power over the individual members. This point of view ignores the fact that the leaders hold their positions at the mercy of the individual members of their own party in the Legislature. The recent history of both parties in both Houses demonstrates that this is no hypothetical constraint on the leadership.

I might add that Senator Speraw earlier was saying, "Well, the members can't really control the Speaker and the President pro Tem because the Speaker and the President pro Tem raise all the money." It seems to me that the way to handle that problem is to adopt campaign finance reform, which some members of the Legislature have actively pursued. And I'm sorry he's not here right now, but I hope that based on what he said that in the future Senator Speraw will be a leader in that effort.

CHAIRMAN HARRIS: Don't bet on it.

MR. LOWENSTEIN: I'm not betting on it; I'm hoping.

ASSEMBLYMAN ROBINSON: I think the Senator's future is somewhat limited anyway, in this process.

MR. LOWENSTEIN: Proposition 24 does have some good points. Foremost among these are the financial disclosure provisions. In addition, a selective pruning of the legislative bud-

get could undoubtedly be accomplished in a beneficial way. But as I stated earlier, Proposition 24 uses a meat axe where a scalpel is needed to do any good. Overall, and by a wide margin, the harm Proposition 24 will cause outweighs the minor benefits.

It is natural that those in and around the Legislature will be preoccupied with the immediate effects of Proposition 24. Which party will gain and which will lose; who will gain in power, and so on.

But the rest of us will be living with Proposition 24 for a long time, and we had better look at what it will do to our system of government over the long run. Proposition 24 is well intentioned and has a few good provisions. But its overall impact will be profoundly undemocratic.

Proposition 24 is a sugarcoated lemon.

Unless you have any more question for me, Professor Welsh will tell you why it is unconstitutional.

CHAIRMAN KEENE: Thank you very much, Mr. Lowenstein. Any questions?

Professor Welsh.

PROFESSOR ROBERT WELSH: Thank you, Chairman Keene, Chairman Harris, and members of the committee.

In my judgement, Proposition 24 is indeed a ...

CHAIRMAN KEENE: Before you begin on the constitutional argument, let me just make an assessment of what additional witnesses are here.

Is Sharon Schuster here?

MS SHARON SCHUSTER: Yes.

CHAIRMAN KEENE: Okay. Do you also have a written statement?

MS. SCHUSTER: Yes.

CHAIRMAN KEENE: Okay. Do you wish to orally testify as well?

MS. SCHUSTER: I've been waiting all morning.

CHAIRMAN KEENE: You've been waiting a long time. Okay. I just want to do an assessment.

Henry Dotson.

UNIDENTIFIED VOICE: I think he stepped out for a moment.

CHAIRMAN KEENE: He has been here and may still be here.

Abby Leibman.

ABBY LEIBMAN: Yes.

CHAIRMAN KEENE: Okay.

Claude Martinez. Mr. Martinez is not here. Okay. Are there any other people who wish to make oral statements today?

UNIDENTIFIED VOICE: There's -- you called Mr. Dotson.

CHAIRMAN KEENE: That's Mr. Dotson. Okay, fine.

Why don't you proceed.

PROFESSOR ROBERT WELSH: Thank you.

Because my analysis will track that presented already to you by Professor Post, from the Boalt Law School, I'll try to be as brief and concise as possible.

In my judgment, those provisions of the Gann Initiative which seek to regulate the internal procedures of the Legislature are unconstitutional under two sections of the California Constitution: Article IV, Section 1, which vests the legislative power in the Assembly and the Senate; and under Article II, Section 7, which specifies the powers of the initiative.

The reason these two provisions are crucial in rendering a constitutional judgment on the issue of the constitutionality of the Gann Initiative is because of the crucial constitutional distinction that is drawn in these two sections between general legislative power, which is vested with the Assembly and the Senate of the Legislature, and the more limited power to propose statutes and amendments to the Constitution, which are reserved to the people under the initiative power.

The language here in the Constitution is explicit on this point. Article IV, Section 1 states:

> The legislative power of this state is vested in the California Legislature, which consists of the Senate and the Assembly; but the people reserve to themselves the power of initiative and referendum.

But the power that is being reserved here is not the general legislative power that has been vested in the Assembly

and the Senate, but rather, as Section 8 of Article II states "the power to propose statutes and amendments to the Constitution and to adopt or reject them."

Under article IV, there is an important distinction between general legislative power and lawmaking power. This is recognized in a number of sections in Article IV. For example, Section 5 says that each House shall judge the qualifications and elections of its members, which is not a lawmaking power, but nonetheless, is a legislative power.

Similarly, Section 11 of Article IV states: "The Legislature or either House may, by resolution, provide for the selection of committees necessary for the conduct of its business."

Again, this is a legislative power to create these committees. It is not a lawmaking power.

ASSEMBLYMAN NAYLOR: Mr. Chairman.

CHAIRMAN KEENE: Yes.

ASSEMBLYMAN NAYLOR: Is there anything which says that those things cannot be done by statute as well?

PROFESSOR WELSH: No. You're correct that there is nothing that says that they cannot be done by statute; but one of the important points to draw here is, what is the binding effect should the Legislature elect to regulate these matters by statute?

It's true that the Legislature may do that, but the only way we can understand that constitutionally is that each House has decided to defer to a legislative proposal as a means of regulating its own internal procedures. But it is not bound by that legislation. It is clear that should the Legislature pass statutes on this matter, either House would be free to ignore those statutes and to proceed as if that were not the law of this state. And the very fact that either House may proceed that way ...

ASSEMBLYMAN NAYLOR: Wait a minute. You're saying that's clear? Now, is that your opinion, or is it just ...

PROFESSOR WELSH: Well, I would make this point with regard to the internal procedures, and here I'm quoting from Mason's Manual of Legislative Procedure:

ASSEMBLYMAN ROBINSON: Excuse me, Mr. Naylor. I just wanted the record to reflect Mr. Mountjoy, after getting us late behind the agenda, is now departing at the assigned time.

ASSEMBLYMAN NAYLOR: He has to take care ...

ASSEMBLYMAN ROBINSON: And I told him that I'd do that before he got out the door.

ASSEMBLYMAN NAYLOR: He's going to a meeting on the reapportionment process; another problem.

ASSEMBLYMAN MOUNTJOY: Have a nice weekend, Dick.

PROFESSOR WELSH: In Section 2 of Mason's Manual of Legislative Procedure, it said:

> The constitutional right of a state legislature to control its own procedure cannot be withdrawn or restricted by statute; but statutes may control procedure insofar as they do not conflict with the rules of the houses, or with the rules contained in this constitution.

So it's clear that on the one hand, statutes may be proposed to regulate the internal procedures of each House, but it's also clear that neither House needs to hold itself bound by those laws that are enacted, and are free to enact their own procedures pursuant to their own rule-making authority.

ASSEMBLYMAN NAYLOR: That's what Mason says, but I don't see how you can say, based on the provisions in the California Constitution that it's clear.

PROFESSOR WELSH: I reached this conclusion, and I think that Mason's conclusion is consistent with the general way in which Article IV is constructed, which is to distinguish between lawmaking activities of the Legislature and other powers that the Legislature possesses which do not involve lawmaking.

One sees this most expressly, I believe, in Section 10 of Article IV, which deals with the presentment of bills before the Governor. Clearly, all laws that the Legislature passes must be presented to the Governor and must be subjected to his approval or veto. Yet, with regard to the internal rules of the Legislature, none of these things need be presented to the Governor. And we have never adopted the principle in this state that legislatures may pass laws without presenting them before the governor.

This point, this distinction, this crucial distinction between general legislative powers versus more specific lawmaking power was recognized by the United States Supreme Court in a recent decision on the legislative veto. The case of Immigration and Naturalization Service v. Chada, where the Court drew an important distinction between lawmaking powers, which necessitate the requirements of bicameralism and presentment of the bills b before the President, and the one-house powers that the Legislature possesses.

For example, among the one-house powers that both the House and Senate possess, and the Assembly and Senate in this state possess, concern the powers of impeachment. Surely it is not the proposition that by initiative we could impeach someone? Yet if we are to accept the idea that by initiative we may do anything that the Legislature may do under its general legislative powers, then that, I would think, would be a necessary conclusion of such a broad reading of the initiative section.

Yet I think it's clear that that was not the intention of those who drafted the initiative section. Their point, as I take it from my reading of the debates during this era, was to provide a mechanism by which the people could circumvent the procedures of the Legislature, when they felt that the Legislature was not meeting their needs. It was not a procedure by which the people could modify legislative procedures, but to circumvent them, to take the lawmaking power into their own hands and enact those laws.

If that were not the case, then we would not vest, in each House of the Legislature, this unilateral authority to control its own rules, and to elect its own officers, and to create its own committees.

Again, I would conclude on this point by quoting here from a decision of the California Supreme Court in the case of Dye v. The Council of the City of Compton, back in 1947. Here the Court said:

> The constitutional reservation of legislative power to be exercised by the initiative and referendum has referred to legislative as distinguished from administrative, or ministerial acts, whether of the State Legislature, city council, or other legislative body.

Under operative case law in this state, the Court has recognized that only bona fide legislative matters may be the subject of initiatives and that attempts to deal with administrative matters or other non-legislative matters may not be accomplished through that process.

CHAIRMAN KEENE: By the use of the term "legislative" there, you mean lawmaking?

PROFESSOR WELSH: I mean lawmaking, yes. Yes, because here, although the Court says legislative and not lawmaking, it distinguishes legislative from what it calls the ministerial acts being performed by state legislatures. And under those ministerial acts, I assume the Court is talking about the general rulemaking authority that each House has to control its members and its own procedures.

That is my statement.

CHAIRMAN KEENE: Thank you very much for your testimony. If there are no questions, we'll go on to the next witness, Sharon Schuster, President, California State Division, American Association of University Women.

MS. SHARON SCHUSTER: Thank you, Senator Keene, members of the Legislature. I do thank you for the opportunity to appear here. Many of the things that I have to say have been discussed during the day; but I do bring a perspective of the 33,000 members of AAUW in California.

CHAIRMAN KEENE: Yes, let me interrupt you just briefly. Mr. Lowenstein and Mr. Welsh, if you had any of your testimony in writing, could you leave that? You did. All right, thank you.

MS. SCHUSTER: Newspaper by-lines have described Proposition 24: "Gann Is At It Again," "How to Wreck the Legislature," "Voter Trick or Treat?" and "Tyranny or Reform?"

Simply put, the initiative seeks, among other things, to reduce what the Legislature can spend on itself by 30%; and to overthrow the normal rules of lawmaking to give small minorities a veto over the legislative process.

On the first topic, how much money the Legislature spends on itself, Gann has hit a sensitive nerve, because everybody knows that whatever it is, it is probably too much. In fact, it constitutes only one-half of 1% of the total state budget, and has not increased the 30% over inflation in the past seven years that Gann says it has.

Further, in 1981, in the ranking of state legislatures, California was 27th in expenditures ...

ASSEMBLYMAN NAYLOR: Excuse me, ma'm. Mr. Chairman. Could I just ask you what the rate of inflation was from 1978 to 1983?

MS. SCHUSTER: I don't have that specific figure, but we're saying it's not increased 30% over inflation.

ASSEMBLYMAN NAYLOR: Well, the budget has gone up about 100% during that period. You think inflation was more than 70% in those five years?

MS. SCHUSTER: That was a time when we were experiencing double digit inflation.

ASSEMBLYMAN NAYLOR: Okay, if you experienced 13% a year, it would be 65% in the five years.

MS. SCHUSTER: But there's compounding there also.

ASSEMBLYMAN NAYLOR: Yes, but we didn't experience 13% a year, either. I mean, just so you know, the 30% was calculated precisely to offset the real dollar increase.

CHAIRMAN HARRIS: Mr. Naylor, I want to interrupt you here. I think it's kind of unfair to the witness. She doesn't know the specific budget; or whether or not the money was for capital outlay; whether or not there were extraordinary expenses -- i.e., reapportionment; and so on and so forth.

ASSEMBLYMAN NAYLOR: Well, she made a statement ...

MS. SCHUSTER: Yes.

CHAIRMAN HARRIS: I understand, but I think she had a general statement and you asked a very specific question that I'm sure she's not prepared to answer. That's all.

CHAIRMAN KEENE: We had to rebuild our Capitol, which was falling down. We had to deal with redistricting that was heavily contested in the courts and elsewhere. These are ...

ASSEMBLYMAN ROBINSON: Twice.

CHAIRMAN KEENE: Twice.

ASSEMBLYMAN NAYLOR: We only had to rebuild the Capitol once, Mr. Keene.

ASSEMBLYMAN ROBINSON: We redistricted twice, and you spent -- the minority party spent as much as the majority party -- twice.

ASSEMBLYMAN NAYLOR: And now we must be spending that money on something else, because we're not doing it again.

CHAIRMAN HARRIS: Go ahead. I'm sorry.

MS. SCHUSTER: Thank you. Anyway, from the 1981 ranking of state legislatures, California was 27th in expenditures, based on dollars of per capita personal income among the 50 states.

CHAIRMAN KEENE: Oh yes, and we granted minority staff, did we not?

MS. SCHUSTER: Okay. But California is frequently referred to, in textbooks and periodicals, as top, along with New York, in overall legislative quality.

That quality is directly related to the 2,200 employees who now toil in Sacramento, helping legislators analyze and understand the complex forces affecting school financing, medical care, agribusiness, criminal justice, the environment, and other aspects of a complex society. In short, California has one of

the best legislatures in the country because it hires a research capability at least equal to the executive branch. And this is the legislative budget that would take the draconian cut, should Gann pass.

This controversial half of 1% also pays for the legislator's district and Sacramento office staffs, whose most important function is communicating with constituents. Senator Mello has told AAUW that his office receives and responds to 5,000 pieces of mail a year. He requires each letter to be answered within five days. We do not believe that if a 30% cut were made, it would come from this aspect of the budget, because no legislator would cut off the life blood of reelection, not even lengthen the turn around time for answering constituent letters, if another choice exists.

And it does. It is the legislative consultant staffs that would take the entire 30% whack. AAUW does not want the Legislature any more dependent for information for decision making on lobbyists and special interests.

The second topic, taking the power to appoint committee members from the Assembly Speaker and the Senate Rules Committee and giving it to the party caucuses, then requiring virtually all Rules Committee votes of any substance to meet two-thirds test concerns us. The result would be that a handful of members of the minority caucus would virtually control the Legislature.

If Gann were in place now, you could control the Senate if you control eight of its members, since there are 15 Republican Senators and eight make a majority of their caucus. They appoint two of the five members of the Senate Rules Committee where the expenditures would require a two-thirds vote. When the two minority members of Rules fail to vote the caucus way ...

ASSEMBLYMAN NAYLOR: Ms. Schuster ...

CHAIRMAN HARRIS: Mr. Naylor wants to interrupt you, please.

ASSEMBLYMAN NAYLOR: Can you tell me where it says that expenditures, other than disproportionate expenditures, require a two-thirds vote?

MS. SCHUSTER: I've been listening to the testimony about that, and it seems to me that neither option is acceptable. Either, if its a disproportionate expenditure it would require a two-thirds; if it were not, and required only a majority, then there would be no reasonable rule that it was a reasonable expenditure. It was only being made in the sense to get the majority -- in other words, the expenditure was giving on the other side in order to get a majority vote. And that's not a reasonable way to make expenditures. The expenditure should be

on its merits. But requiring a two-thirds vote for approval on its merits would give the opportunity for a minority to block it.

ASSEMBLYMAN NAYLOR: But -- oh you mean ...

MS. SCHUSTER: So neither option is acceptable.

ASSEMBLYMAN NAYLOR: If it were on its -- if it were meritorious, you wouldn't have any trouble getting the two-thirds vote, right?

MS. SCHUSTER: Not necessarily. Not necessarily.

CHAIRMAN HARRIS: Okay.

MS. SCHUSTER: When we're dealing with the situation ...

ASSEMBLYMAN NAYLOR: (Inaudible) proportional expenditures only require a majority vote, so when you're talking about eight people controlling the Legislature ...

MS. SCHUSTER: Well it's true, in that sense ...

ASSEMBLYMAN NAYLOR: ... I think you're ignoring ...

MS. SCHUSTER: ... but the proportional would not necessarily be a wise expenditure, is what I'm saying.

CHAIRMAN HARRIS: Okay. Please, would you ...

MS. SCHUSTER: Just a little bit more.

CHAIRMAN HARRIS: All right.

MS. SCHUSTER: We are concerned about the potential that if these two minority members of Rules failed to vote the caucus way, they can be replaced with two who will. And thus the minority could stymie the entire legislative process by refusing to allow bills to be heard, and so on and so forth.

ASSEMBLYMAN NAYLOR: Wait a minute. Mr. Chairman.

CHAIRMAN HARRIS: Yes, Mr. Naylor.

ASSEMBLYMAN NAYLOR: There's nowhere that says that it takes a two-thirds to assign bills or allow bills to be heard. All of that is quite clearly majority rule in the initiative.

MS. SCHUSTER: But in the control of the minority members, that would also pass through.

ASSEMBLYMAN NAYLOR: But a majority can assign bills. A majority in the committees to which they are assigned can pass bills. I think you're assuming that it takes a two-thirds vote

to assign bills and do some other things, and it does not. That is an error that was made in the White Paper that Mr. Mountjoy referred to. It just plainly is not in the initiative.

MS. SCHUSTER: I think we're also assuming that there will be a continuation of the influence of the power of the minority.

CHAIRMAN HARRIS: Okay.

(Inaudible general conversation)

CHAIRMAN HARRIS: We have most of your statement for the record, don't we?

MS. SCHUSTER: Right.

CHAIRMAN HARRIS: Okay, so you can just move toward conclusion.

MS. SCHUSTER: Well, let me just sum up then.

CHAIRMAN HARRIS: Thank you.

MS. SCHUSTER: Because we will submit this for the record.

CHAIRMAN HARRIS: The only reason I'm asking you to do that is because everything you say gets into a debate with Mr. Naylor. And he's frustrated because I won't give him the amount of time he'd like to have.

MS. SCHUSTER: Let me just sum up by saying that in our experience we, as members of AAUW, are supportive of the current process. Although we don't always agree with the current process ...

CHAIRMAN HARRIS: Right.

MS. SCHUSTER: ... we do feel comfortable with working within it. We do not approve of this initiative which will be on the ballot. And it is the position of our organization, based on the policy adopted within it.

CHAIRMAN HARRIS: Thank you very much, Ms. Schuster.

Mr. Dotson.

I appreciate your testimony and your taking the time to be here; sorry for the arduous process and the length of time we've taken.

Mr. Dotson, how are you? Good to see you again.

MR. HENRY DOTSON: Yes, sir. Good to see you.
Mr. Chairman, and those members of the committee who are left ...

CHAIRMAN HARRIS: You don't need to say that. That will go in the record, that nobody was here.

MR. DOTSON: Well that's right. We may strike that from the record.

CHAIRMAN HARRIS: No, no, no, no, no. Mr. Robinson and Mr. Naylor are enjoying that.

MR. DOTSON: Good afternoon, to those of you here. My name is Henry Dotson, and I'm Vice President of the Southern Area Conference of NAACP branches. Today I will be reading for you a statement prepared by Mrs. Virna Canson, who is, as I'm sure you know, the Director of the Western Region, National Association for the Advancement of Colored People.

Mrs. Canson sends her greetings to the Joint Committee, her thanks for being invited to testify, and her regrets that scheduling conflicts precluded her presence at this hearing. You may be interested to know that the NAACP and the National Urban League are convening a National Summit on the State of the Black Family at Fisk University in Nashville, Tennessee, May 3, through 5; and Mrs. Canson is attending this important meeting.

Before I read what she has written, I would just like to say that it is -- it provides for you a different approach to this whole problem, or some things that have gone unsaid. The legal, procedural, and parliamentary questions and opinions have been thoroughly exhausted. This testimony invites your attention to an area that perhaps you have not given very much verbal or public comment. And I will read her testimony.

If the people of California fail to examine the Gann Initiative in the broad context, or fail to relate it to an insidious, pervasive drive, by well financed right-wingers, to capture the governing process of our Republic, we will hand over to this destructive element the power to paralyze our Legislature.

As I prepared this presentation, each time I reviewed Proposition 24, another frightening aspect became apparent.

The first question I had to ask myself, and I also ask you and Mr. Gann, is, would there be a Proposition 24 if the Speaker of the Assembly were a white man? Far too many people will seek to avoid raising that question, even though in their consciousness, just as in mine, the piercing question lies. We would all do well to recognize the presence of this aspect of Gann's offensive.

ASSEMBLYMAN NAYLOR: Mr. Chairman.

CHAIRMAN HARRIS: Yes, surely, Mr. Naylor.

ASSEMBLYMAN NAYLOR: Because I'm probably going to leave in about two minutes, I'd like to comment on that aspect of the testimony.

CHAIRMAN HARRIS: Please.

ASSEMBLYMAN NAYLOR: Virtually every issue raised in Proposition 24 was raised under Leo McCarthy's speakership and under previous speakerships. The people most prominent in the Proposition 24 campaign all voted for Willie Brown for Speaker, giving him a crucial margin. And I deeply and bitterly resent the implication of some sort of a racist intent in Proposition 24.

MR. DOTSON: Well, I would like to respond to that by stating that maybe the questions were raised by prior speakers, or maybe some objections to their method of operating, but we never had a Proposition 24. And that's what we're faced with now. And that's the allegations that are being made.

CHAIRMAN HARRIS: Henry, rather than read the statement -- the statement in its entirety will be printed in the record, so we don't need to hear that, and we are pressed for time ...

MR. DOTSON: Very well.

CHAIRMAN HARRIS: ... and I think the members are getting ready to leave.

MR. DOTSON: Yes.

CHAIRMAN HARRIS: Is there anything in conclusion, or anything in specificity, or in response to earlier testimony you think you'd like to add to this statement?

MR. DOTSON: In response to prior testimony, I think that legal and constitutional experts, as they normally do, have argued the points as to whether or not there is constitutionality. We feel that it would probably, in the long run, be rejected by the court of the highest authority in this state. This method by which -- has been used to make rules for a body that has the power to govern itself ...

CHAIRMAN HARRIS: So in conclusion, the NAACP is opposed to the ...

MR. DOTSON: Absolutely opposed to it.

CHAIRMAN HARRIS: ... to this as for the reasons that are stated in the testimony that ...

MR. DOTSON: That is correct.

CHAIRMAN HARRIS: ...(Inaudible) Mrs. Canson sent.

MR. DOTSON: Yes.

CHAIRMAN HARRIS: Okay. And one of the things that you stated is that you think that it's inconsistent with the two-party system? Is that right?

MR. DOTSON: Yes, that is correct.

CHAIRMAN HARRIS: Okay. And one of the things that you stated is that you think that it is inconsistent with the two-party system. Is that right?

MR. DOTSON: Well, yes.

ASSEMBLYMAN NAYLOR: Mr. Chairman.

CHAIRMAN HARRIS: Yes, Mr. Naylor.

ASSEMBLYMAN NAYLOR: Thank you very much.

CHAIRMAN HARRIS: All right, thank you. See you on Monday.

Well, thank you. I am looking for things, but I think that you have stated, very clearly, the proposition.

MR. DOTSON: Yes, I believe on page 4 it addresses the problem of the two-party system...

CHAIRMAN HARRIS: ...Okay, thank you.

MR. DOTSON: ...and what it may portend that if it becomes necessary because there is a majority of Democrats in this state and if it becomes absolutely necessary for a two-thirds majority, it may push one party, the one that has the greatest potential for making a two-thirds majority in the Legislature, by electing two-thirds members they may do that and that, in our opinion, is not good for a two-party system. There should be balanced representation.

CHAIRMAN HARRIS: Thank you Mr. Dotson. We have your testimony in response to -- who is that.

UNIDENTIFIED FEMALE VOICE: Abby Leibman, Women Lawyers.

CHAIRMAN HARRIS: Yes, Ms. Leibman. I am sorry. Welcome. Thank you very much for your patience. Sorry to have you waiting around all this time. I hope we didn't destroy your lunch hour.

MS. ABBY LEIBMAN: What lunch?

CHAIRMAN HARRIS: What lunch hour.

ASSEMBLYMAN ROBINSON: Mr. Naylor's and Mr. Mountjoy's.

CHAIRMAN HARRIS: Right.

MS. LEIBMAN: What I think I would like to do is -- I gave Ms. Riley a copy of the written testimony and what I think I would like to do is just for the spoken record highlight two of the concerns we have.

CHAIRMAN HARRIS: Okay.

MS. LEIBMAN: My name is Abby Leibman. I appear before you on behalf of the California Women Lawyers, and I want to thank you, of course, for providing us this opportunity to comment on the Gann Initiative.

CHAIRMAN HARRIS: Thank you.

MS. LEIBMAN: California Women Lawyers is a statewide Bar Association. It has 19 affiliate local women's bar associations as well as individual members and represents the interests of thousands of women lawyers in the state of California.

As lawyers we cannot...

(Ms. Leibman's testimony stops right in the middle of a sentence and begins with Mr. Hamm's testimony.)

MR. WILLIAM HAMM: ...during fiscal year 1984-85. Article 9934 of the measure would also limit the rate of growth in appropriations in support of the Legislature for all years into the future. In this regard it is similar to the appropriation limit that can be found in Article 13 (b) of the State's Constitution that, interestingly enough, was also sponsored by Mr. Paul Gann. There is a very big difference between those two appropriation limits, and I think it may be worth putting on the record what that difference is.

CHAIRMAN HARRIS: Please.

MR. HAMM: The appropriation limit in Article 13 (b) limits the rate at which appropriations from the proceeds of taxes can go over time. But in any year that the Legislature fails to appropriate up to the limit, that doesn't reduce the limit for subsequent years, because this year's appropriation limit is based on last year's appropriation limit, and the amount actually spent doesn't enter into the calculation in any way.

Now as we read Article 9934, that is not the case with Proposition 24. The appropriation limit in 1985-86 would be based on the amount spent in 1984-85. What that means, of course, is if the Legislature doesn't appropriate up to its appropriation limit in so doing, it is reducing dollar for dollar its appropriation limit in the following year. Similarly, if the Legislature does not spend everything that it appropriates for any year, it reduces dollar for dollar its appropriation limit in the following year.

Now, the significance of this, I think, is twofold, and I present this just as fact and not as an implied criticism of the measure because given the fact that under the Government Code we must do an impartial analysis of all of these measures, it is not my purpose to criticize any of them. But, I think the consequences of this type of an appropriation limit are first, that over time it will be very difficult for appropriation in support of the Legislature to keep pace with general fund expenditures, not withstanding the purpose expressed in this initiative simply because of the fact that you are going to have slippages. And secondly, it provides some incentive to the Legislature to appropriate the full amount of the limit regardless of whether or not it thinks it needs all that money this year because it has to maintain its options for future years. For example, in the year before the year in which the Legislature would have to incur the costs of doing a reapportionment, it might decide that it doesn't need all of that money, but in order to have the money available in the following year, it would have to appropriate all of that money and then in the last two weeks of June it would have to act like executive branch agencies frequently act, and that is whatever we do, let's not let any of that money go back to the Treasury.

CHAIRMAN HARRIS: Not only appropriate, but spend.

MR. HAMM: Exactly. I just thought that was an important aspect...

CHAIRMAN HARRIS: That is an important point. I appreciate that.

MR. HAMM: ...that had not been raised. Other than that, I am, of course, at your disposal and will answer any questions.

CHAIRMAN HARRIS: Thank you, Mr. Hamm. I appreciate it very much.

I want to thank all of you who are still here, and we will conclude the testimony and the hearing.

* * * * * * *

APPENDICES AND EXHIBITS

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STATEMENT OF BION M. GREGORY
LEGISLATIVE COUNSEL OF CALIFORNIA

Joint Hearing of the
Senate and Assembly Judiciary Committees

May 4, 1984
Los Angeles, California

Mr. Chairman and Members, I am Bion M. Gregory, the Legislative Counsel of California. I am appearing today at the request of the committee for the purpose of identifying the changes in practices and procedures of the Legislature that would occur if Proposition 24 is adopted by the people at the June 1984 Direct Primary and is fully implemented.

The measure would repeal a number of provisions of existing law relating to legislative committees, procedures, officers, and funding, and would substitute therefor provisions entitled the "Legislative Reform Act of 1983" (proposed Ch. 8 (commencing with Sec. 9900), Pt. 1, Div. 2, Title 2, Gov. C.) dealing with the same subject matter. I will discuss first the changes proposed by the new chapter and then identify those few provisions which would be repealed by the measure but would not be clearly replaced or superseded.

CHAPTER 8

Article 1. General

Article 1 sets forth various general provisions.

Sections 9900-9903.

Section 9900 titles the new chapter ("Legislative Reform Act of 1983"), Section 9901 alleges certain "findings and declarations" concerning existing legislative practices and procedures, and Section 9902 states the purported purposes for the enactment of the chapter. Section 9903 would require that the chapter be liberally construed to accomplish its purposes.

Sections 9904-9905.

Section 9904 would permit the provisions of the new chapter to be amended only by compliance with the procedures stated therein. Specifically, subdivision (a) would provide that the chapter may be amended only to further its purposes, only by statute, passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring and signed by the Governor, and only if, at least 20 days prior to passage in each house, the bill in its final form

has been printed and made available for public inspection. Alternatively, under subdivision (b), the chapter may be amended or repealed by a statute that becomes effective only when approved by the electors. If any act of the Legislature (not approved by the voters) conflicts with the provisions of the new chapter, the latter would prevail (proposed Sec. 9905).

These provisions are in stark contrast to existing law, under which each house is generally authorized to adopt, amend, and repeal, by house resolution, rules relating to its internal procedures, including the choosing of its officers and the selection of committees (Secs. 7, 11, Art. IV, Cal. Const.). In addition, the California Constitution (subd. (c), Sec. 7, Art. IV, Cal. Const.) specifically empowers the two houses together to provide by concurrent resolution, adopted by a two-thirds vote of the members of each house, with regard to the extent to which its proceedings are to be public. These resolutions supersede any prior statutes with which they conflict. Finally, where the Legislature elects to set forth its rules of procedure in a statute, there is no present requirement that the statute be adopted by any more than a majority vote.

Article 2. Legislative Powers and Duties

Article 2 delineates various legislative powers and duties.

Section 9910.

Section 9910 continues existing law insofar as it makes the Speaker of the Assembly responsible for the efficient conduct of the legislative and administrative affairs of the Assembly and provides for the election of the Speaker at the commencement of the session. However, as I will point out in connection with the discussion of the powers of the Assembly Rules Committee, the powers of the Speaker to accomplish this task would be curtailed by the proposition.

Section 9911.

Section 9911 would provide, in part:

> "9911. There is hereby created in the Assembly a Committee on Rules, which shall consist of the Speaker, who shall be the chairman of the committee, and six other Members of the Assembly, three to be elected by the party having the largest number of Members in the Assembly and three to be elected by the party having the second largest number of Members.
>
> * * *"

Under present Assembly Rule 13, the Assembly Rules Committee consists of a Member appointed by the Speaker, who is also the chairman, the Majority Floor Leader, the Minority Floor Leader, and six other Members, three of whom are members of the majority party, and three of whom are members of the minority party. These six

members are selected by their respective party caucuses but must then be approved by a vote of 41 or more members of the Assembly. In addition, unless otherwise elected or appointed as a member, under existing provisions, the Speaker, Speaker pro Tempore, Majority Party Caucus Chairman, and Minority Party Caucus Chairman are ex officio members of the rules committee with all rights of membership except the right to vote.

Also, because Section 9911 specifically limits membership on the rules committee to members of either the majority party or the party with the second largest number of members, a member of any other party or a member who is not a member of any party would be barred from serving on the committee.

To summarize, under Section 9911, the Assembly Rules Committee would consist of seven rather than nine members, the Speaker would serve as the chairman of the committee, and the membership of the Assembly would have no power to reject the selections for membership.

Section 9912.

Subdivision (a) of Section 9912 would prescribe the powers of the Assembly Rules Committee. In this regard, Section 9912 would authorize the rules committee to appoint the chairman and vice-chairman of all other Assembly committees, would require that the chairman and vice-chairman of each committee be members of different parties, and would give the rules committee general direction over the Assembly Chamber and rooms set aside, including private offices, for use of the Assembly and its members. Under present procedures, the Speaker appoints the chairman and vice-chairman of Assembly Committees (and is not required to appoint members from different parties) and the Speaker has general direction over the Assembly Chamber and rooms set aside for use of the Assembly and its members.

Section 9912 continues the general authority of the rules committee to allocate funds, staffing, and other resources for the operation of the Assembly but further provides:

> ". . . Except as provided otherwise by affirmative recorded vote of two thirds of the total membership of the committee, all funds, staffing, and resources shall be allocated proportionately by party."

This provision has no counterpart in existing law.

Subdivision (b) of Section 9912 would restrict the ability of the rules committee to delegate its administrative powers to its chairman, chief administrative officer, or other agent. Specifically, it would provide:

> "(b) Notwithstanding any other provision of law or rule, neither the Chairman nor any member or agent of the Assembly Committee on Rules shall have the power to

perform any action on behalf of the committee, including but not limited to the making of contracts, the payment of claims, the allocation of office space, or the hiring or dismissal of staff, without the express authorization of two thirds of the total membership of the committee. Such authorization shall apply only to the matter or matters under immediate consideration."

This provision would reverse the practice formally adopted by the Assembly Rules Committee pursuant to Assembly Rules Committee Resolution No. 82-1 (3/1/82) which provides:

"Resolved by the Committee on Rules, That it hereby reaffirms the longstanding custom and practice for the chairman of the Committee on Rules, in the absence of any formal action by the committee, to exercise the authority, perform the duties, and assume the responsibilities of the committee in relation to the assignment of offices and desks, the appointment of attaches and employees of the Assembly, the execution and administration of contracts, and the performance of other similar administrative duties."

Section 9913.

Section 9913 is an entirely new provision that makes all statutory appointments delegated to the Speaker of the Assembly subject to confirmation by a two-thirds vote of the Assembly Rules Committee. Under existing law, the Speaker has the statutory power to make appointments to various boards and commissions.

The proposition does not contain a comparable provision with respect to appointments made by the Senate Rules Committee.

Section 9914.

Section 9914, relating to the President pro Tempore of the Senate, is comparable to Section 9910 (which relates to the Speaker) and generally continues existing law with respect to the election of the President pro Tempore and makes the President pro Tempore responsible for the efficient conduct of the legislative and administrative affairs of the Senate.

Section 9915.

Section 9915 leaves the present size of the Senate Rules Committee unchanged. The composition of the rules committee would be specified as the President pro Tempore, who would be the chairman, two members selected by the majority party and two members selected by the party with the second largest number of members. Present rules name the President pro Tempore chairman of the committee but the other four members of the committee are elected by the entire Senate. Also, like the Assembly Rules Committee, a member of any party other than the two largest or a member who is not a member of any party would be barred from serving on the committee.

Section 9916.

Section 9916 prescribes the same powers, and limitations on these powers, for the Senate Rules Committee, as Section 9912 prescribes for the Assembly Rules Committee. The changes from current practice are not quite as great here because the Senate Rules Committee presently appoints the chairman and vice-chairman of the standing committees of the Senate and has general direction over the facilities of the Senate. However, Section 9916 provides the same requirement of proportionate allocation of resources and the same restriction on the delegation of powers as would Section 9912. The latter restriction would be contrary to the existing practice and the former requirement has no counterpart in existing law.

Section 9917.

Under Section 9917, the Joint Rules Committee would be comprised of the combined membership of the Assembly Rules Committee and the Senate Rules Committee, plus two other Senators, one to be elected by the party having the largest number of members in the Senate and one to be elected by the party having the second largest number of members. By comparison, the Joint Rules Committee now consists of nine members of the Assembly Committee on Rules, the Speaker of the Assembly, four members of the Senate Committee on Rules, and six members of the Senate, to be appointed by the Senate Committee on Rules. As may be seen, the Joint Rules Committee would be reduced in size from 20 members to 14 and the membership from each house would be split 4-3, with only the two largest parties from each house being represented on the committee.

Section 9917 would require "any action which involves or anticipates the expenditure or allocation of funds ... [to be approved by] an affirmative vote of at least two thirds of the Senate members and two thirds of the Assembly members." This requirement is imposed even though the funds may be allocated on a proportional basis between the parties. Similarly, Section 9917 would prohibit "the Chairman ... [or] any member or agent of the Joint Rules Committee ... [from performing] any action on behalf of the committee, including but not limited to the making of contracts, the payment of claims, the allocation of office space, or the hiring or dismissal of staff, without the express authorization of two thirds of the membership of the committee. Such authorization shall apply only to the matter or matters under immediate consideration." Presently, the Joint Rules Committee may act with an affirmative vote of a majority of the members from each house and Joint Rule 40 expressly authorizes the committee to appoint a chief administrative officer and give this person such duties relating to the administrative, fiscal, and business affairs of the committee as the committee may prescribe.

Article 3. Legislative Rules and Procedures

Article 3 sets forth various provisions relating to legislative rules and procedures.

Section 9920.

Section 9920 would require a two-thirds vote of the membership of the house in question to adopt or amend a rule of that house and a two-thirds vote of the members present and voting (a quorum being present) to temporarily suspend a rule of that house. Under the present rules, adoption, amendment, and suspension generally require only a majority vote of the membership of each house.

Section 9921.

Section 9921 would require a two-thirds vote of the membership of each house to adopt or amend a joint rule, and a two-thirds vote of the house in question to temporarily suspend a joint rule. Historically, adoption and amendment of the joint rules has been permitted on a majority vote; temporary suspension has required a two-thirds vote.

Section 9922.

Section 9922 would require that all standing committees (except the rules committees) be created and the size and jurisdiction thereof established through the adoption or amendment of the rules of the respective house by a two-thirds vote of that house. Committee membership would be required to be proportional to the partisan membership of the house and members of each committee would be selected by their respective caucuses.

Presently the standing committees of each house are created and, in the Senate, the size and jurisdiction thereof is established by rules adopted by a majority vote of the membership of the respective houses. In the Senate, committee members are appointed by the Senate Rules Committee which is required to give consideration to seniority, preference, and experience, and is further required, as far as practicable, to give equal representation to all parts of the state. In the Assembly, the Speaker initially determines the size of and appoints members to the standing committees, giving consideration to the preferences of the members. Once established, the size of an Assembly standing committee may only be changed by a majority vote of the membership of the Assembly.

Section 9923.

Section 9923 would prohibit any special or select committee or subcommittee from being established in either house except by a two-thirds vote of the rules committee of that house. Membership on these committees or subcommittees would be made pursuant to Section 9922, i.e., proportionately by the respective party caucuses.

Presently, the Senate Rules Committee and the Speaker of the Assembly, respectively, are authorized generally to establish and appoint the members of special committees or subcommittees of the General Research Committees of the Senate and the Assembly. There is

no requirement of proportionate representation on these committees or subcommittees.

Moreover, it is a common practice when less than a quorum of a standing committee is present for the members present to act as an ad hoc subcommittee which takes testimony and then reports to the full committee when a quorum is present. It is not clear whether Section 9923 is intended to affect this practice but the literal language of the section would appear to prohibit this practice.

Section 9924.

Section 9924 would require that joint committees be established by concurrent resolution, two-thirds of the membership of each house concurring, that membership on these committees be equally divided between the Senate and the Assembly, and that the members from each be proportional to the partisan composition of that house and selected by the party caucuses.

Presently, joint committees may be established by resolution or statute and, except as otherwise provided by that resolution or statute, the members thereof are appointed by the Senate Rules Committee and Speaker of the Assembly, respectively. There is no requirement of proportional partisan representation.

Section 9925.

Section 9925 would allow a Member to cast a vote for another Member, allow a Member to change his or her vote or add a vote to the roll after the vote is announced, with the consent of four-fifths of the membership of the house. In addition, it would not allow any vote to be taken in committee or subcommittee in the absence of a quorum, except a vote to adjourn.

These provisions are generally consistent with present rules. However, in the Assembly an absent member may have his or her vote added to a roll if the outcome of the vote is not changed and there is no objection to the addition. In the Senate there is no provision currently for vote switching or adding a vote.

As stated earlier, it is a common practice when less than a quorum of a standing committee is present for the members present to act as an ad hoc subcommittee which takes testimony and then reports to the full committee when a quorum is present. It is not clear whether Section 9925 is intended to affect the practice of taking a vote before a quorum is present but the literal language of the section would appear to prohibit this practice.

Section 9926.

Section 9926 generally recodifies the open meeting requirements of present Sections 9027 and 9028. That is, meetings of the houses and their committees must be open and public and appropriate notice thereof given. Section 9926 does, however, refer to

notice in the "Journal" when it should have referred to notice in the File and, more significantly, requires a three-fifths vote, instead of a majority vote, to dispense with this notice. Moreover, the section requires only a two-day notice in some circumstances where a four-day notice is presently required.

Section 9927.

Section 9927 would specify when the Assembly or Senate or committees thereof may meet in executive session. The section is based on present Section 9029; however, the section more narrowly limits the circumstances where an executive session may be held. Specifically, Section 9927 would no longer permit an executive session (1) to consider matters relating to the appointment, employment, or dismissal of an employee; (2) to hear complaints or charges brought against an officer, employee, or elected public official; (3) to consider matters relating to internal house management; (4) to consider the assignment of bills to committee; or (5) for a conference committee to consider nonsubstantive amendments.

Section 9928.

Section 9928 would prohibit any Member of the Senate or the Assembly from signing a conference committee report unless a full and public meeting of the conference committee has been held and would further prohibit adoption of a conference report until the report has been printed and made available to the public for a minimum of two days, unless this requirement is dispensed with by a vote of two-thirds of the membership. Any conference report adopted in violation of this provision would be deemed void.

The general requirement of an open, public, noticed meeting continues present practice. It is not clear whether a "full" meeting of a conference committee requires all members to be present or that there is complete testimony from all interested parties or both. The requirement that the conference report be printed evidences a lack of understanding of what a conference report is (i.e., basically a set of amendments). Finally, deeming a conference report void suggests that it is intended that the underlying bill is deemed not to have been enacted and would permit an unprecedented collateral attack on any statute enacted through this process.

Section 9929.

Section 9929 substantially recodifies the criminal penalty now provided by Section 9030 for attendance by a member at a meeting where action is taken with knowledge that the meeting is held in violation of the open meeting requirements.

Section 9929.5.

Section 9929.5 is based on present Section 9031 which provides express authority for an action by mandamus, injunction, or declaratory relief for the purpose of preventing violations of the open

meeting law. Section 9929.5 would provide similar express authority for an action to prevent any violation of any provision of Proposition 24.

Article 4. Legislative Funds and Administration

Article 4 sets forth various provisions regarding legislative funds and administration.

Sections 9930-9933.

Section 9930 continues existing law insofar as it provides for deposit of appropriations in the respective legislative contingent funds and for disbursement by the respective rules committees. However, Section 9931 would require that disbursements from the Senate and the Assembly funds be divided proportionately according to the partisan composition of the respective houses or as otherwise provided by a two-thirds vote of the membership of the respective rules committee. Funds in the joint contingent fund would be allowed to be disbursed only pursuant to a two-thirds vote of the total membership of the Joint Rules Committee (see Section 9932). Money appropriated for legislative printing would be subject to the same requirements of proportionate partisan disbursement or a two-thirds vote. There is no present requirement of proportionate disbursement and funds are allocated by the respective rules committees by majority vote.

Section 9934.

Section 9934 would require, within 30 days after the adoption of the proposition, that funds for support of the Legislature be reduced by an amount equal to 30 percent of the amount appropriated for support of the Legislature for the 1983-84 fiscal year and thereafter would limit the amount appropriated for support of the Legislature to an amount equal to that expended for support in the prior fiscal year, adjusted by the increase or decrease in state General Fund spending.

Section 9935.

Section 9935 generally recodifies existing Section 9129 regarding the continuous availability of appropriations deposited in the contingent funds. However, the new section would require that unexpended funds appropriated for the expenses of a special session revert at the end of the session. This provision probably is meant to refer only to unencumbered funds in order that funds remaining at the end of the session may be used to pay for expenses which accrue (i.e., the funds have been encumbered for the expenses) during the session but which are not actually paid for until after the session ends.

Section 9936.

Section 9936 generally recodifies existing Section 9131 which requires issuance of an annual public report on the expenditures made from the respective contingent funds. In addition, Section 9936 would require issuance of a quarterly report and would add two new categories (staff salaries and expenses and third party contracts) to the presently required list of itemized expenditures.

Section 9937.

Section 9937 would require the Joint Rules Committee to contract annually for an independent audit of the revenues and expenditures from the Assembly Contingent Fund, the Senate Contingent Fund, and the Contingent Funds of the Assembly and Senate. In addition, this section would provide that the organization which performs the audit shall be subject to the approval of the Fair Political Practices Commission.

This provision is entirely new. However, it has been the past practice of the respective rules committees to contract for an independent audit, but the selection of the auditor has never been subject to FPPC approval.

This completes my discussion of the newly added provisions of the measure. As stated at the outset, the measure would also repeal certain provisions, namely Sections 9221 to 9223, inclusive, of the Government Code which generally require members of the Assembly and staff to assist the Speaker in carrying out the duties of the Speaker, limit the amount and method of payment for performing certain services, and require the payment of certain expenses incurred by the Speaker. The repeal of these provisions would not appear to work any significant change in the law.

TESTIMONY FOR THE SENATE AND ASSEMBLY

JUDICIARY COMMITTEES ON PROPOSITION 24

May 4, 1984

Los Angeles, California

My name is Cindy Simon, senior program director for legislative management with the National Conference of State Legislatures. I am pleased to have the opportunity to appear before you and to provide this committee with background on legislative rules and operations similar to those addressed in the Gann Initiative. Specifically, I have been asked to comment on:

1. whether the statutory requirements which the Gann Initiative would impose on the legislature are unique;

2. the general wisdom and possible constitutionality of imposing by initiative statutory restrictions on internal legislative management; and

3. the experience of other state legislatures in handling some of the matters which are addressed in Gann.

The Gann Initiative is in many ways unique. First, if approved by the voters and upheld in any subsequent court challenge, the Gann Initiative

would represent the first instance in which a legislature was forced to operate under detailed rules of procedure and operations spelled out in statute and imposed from the outside. The two key phrases are "statutorily set" and "externally imposed."

State legislatures operate under three different levels of directives. First, there are constitutional mandates regulating such matters as session length, legislative officers, general rules for passage of legislation and voting, and in some states even matters of legislative compensation. On a second level, state legislatures are given by constitution the power to determine detailed rules of parliamentary procedure and internal legislative organization. Rules are matters reserved to the actions and consent of each house separately, except in cases of joint rules governing transactions between the houses. Finally, in some instances, state legislatures pass legislation establishing certain legislative entities or processes, for example sunset procedures, statutory committees and staff agencies, financial disclosure requirements and open meetings. All of these form a network of guidelines which provide the legislative institution with a measure of certainty, accountability, clarity, order and structure.

The Gann initiative seeks to impose by statute many provisions which traditionally, historically, and constitutionally have been the subject of legislative rule. Legislative rules are formulated by the members to govern the institution's operations in a manner which provides flexibility and reflects political reality. To impose statutory guidelines on such things as committee selection, voting requirements, and management decision-making by the Rules Committees, will surely handicap the legislative institution's

operational effectiveness, encumber the independence of future legislatures and undermine the legislature as a co-equal branch of government.

The recent landmark U.S. Supreme Court decision, Immigration and Naturalization Service v. Chadha, noted the dual power of Congress in its bicameral law-making acts and its unicameral acts. Among the unicameral powers recognized by the High Court is the power of each house to act alone in determining its own rules and other internal matters. Similarly, the Massachusetts Supreme Court upheld an Attorney General's decision in 1983 not to certify an initiative, which like Gann sought to regulate internal legislative business by statute. The Massachusetts court rejected the initiative because it dealt with matters of rule rather than laws or constitutional amendments. The court commented:

> The plaintiffs argued before us that if their initiative were enacted, the Houses of the Legislature would not have unicameral power to nullify its content. In this they are mistaken, because such a result would effectively vacate the constitutional authority of the Senate and House to order their own internal procedures. This cannot be brought about by an initiative petition unless that petition, unlike the one before us, seeks and accomplishes a constitutional amendment to that end.

No state legislature or individual legislative body currently has its internal operations governed by statute. No state legislature presently labors under rules of procedure imposed by initiative petition or by any

other external group. State constitutions provide for a variety of checks and balances between the three branches of government, and legislators must face the ultimate test of accountability in their individual elections. These are appropriate checks to deal with public perceptions of irresponsibility and alleged capriciousness in the legislature.

Let me turn now to some of the specific provisions delineated in Gann and comment on how other state legislatures handle these same matters. While Gann addresses a variety of issues, I will primarily focus on practices of:

organizing and naming committees,

voting requirements, and

allocating staff, funds and other resources proportionately.

No state legislature is encumbered with a committee system delineated by statute, rather the rules of the 99 legislative bodies provide the necessary instructions for organizing and managing committees. (Individual statutory committees do exist in a limited number of states, but these committees are usually special purpose bodies, such as audit or sunset committees.) In most states, leaders (most often the presiding officer or a committee of leaders) determine the size, ratio of majority to minority members, and the specific appointments of members and chairs.

Appointments are made by the presiding officer in two-thirds of the legislative bodies. This power is more common among House speakers (four out of five), while a committee on committees is the pattern in better than a third of the 50 state senates.

Proportional representation on committees is not required by statute or constitution in any of the 50 states, and most legislative rules are silent on the topic of minority party appointments to committees. Where legislative rules address minority party appointments, the provisions range from guarantees of proportional representation to grants of appointment uthority to the minority party. In 22 legislative bodies representing 15 states, committees are required to reflect the proportional balance within the whole chamber. The language varies from broad directives (for example the Pennsylvania Senate's language -- "shall reasonably reflect") to specific instructions for dealing with fractions. In this latter category are the lower houses in Kansas, Maryland and New York. In 12 legislative bodies, the minority party (through its leadership or caucus) is given explicit authority under the rules to appoint party members to committees. In other state legislatures, consultation with the minority and proportional representation are followed informally though not required under the rules.

The question of proportional representation was litigated in an Arizona case, Davids v. Akers, in 1977. The United States Court of Appeals, Ninth Circuit, in its decision, puzzled over such matters as fractions of committee seats, the concept of representation, and the role of the courts in legislative business. The court in its decision commented:

> In a legislature, Republicans do not always and only vote with Republicans or Democrats. Are committee appointments to be juggled or rejuggled depending upon which measure is coming before a committee? If not, is there not unequal and therefore unconstitutional representation on the committees? If so, are the adjustments to be based upon the supposed views of each member, or those of his constituents, or what? Plaintiffs' simplistic notions of representation are a poor basis for transferring decisions about committees from Arizona's House of Representatives to a federal district court. From the beginning of the Republic, and long before, until now, this kind of decision has been committed to the legislative body involved, whether it be the House of Commons, one of the houses of Congress, or one of the houses of a state legislature. We are not in a position ... to make a better judgment...

Let me turn now to the matter of voting requirements. The standard for most legislative actions is majority vote. State constitutions set out other instances, for example impeachment, emergency acts, or constitutional amendments, where a more stringent standard such as two-thirds or a constitutional majority is required. In a few states, for example Arkansas, Illinois, California, and Delaware, extraordinary majorities are required for budget and tax matters. To my knowledge, extraordinary majorities are not required by state constitutions or by statute on matters of legislative management or organization. However, by their own rules, more than 70

legislative bodies require a vote of at least two-thirds of those elected or present to suspend the rules. In a few states, for example Montana, Alabama, South Carolina, and New York, unanimous consent is required to suspend the rules without prior notice.

Let me turn finally to the question of governance and the division of legislative resources within a legislative body. The management structure varies greatly among the 50 state legislatures; likewise, the apportionment of staff and other resources differs. In several of the largest states, the legislature is directed and managed by the primary partisan leaders who are responsible for the allocation of resources and staff. For example, in Massachusetts, New York, and Michigan, the majority party leadership determines the division of resources between the two parties and the staffing pattern for the legislature. In Ohio, where a strong, centralized nonpartisan staff serves the General Assembly, the principal majority party leaders control the division of the remaining resources within each chamber. In other states, for example Florida, Connecticut, Washington, Kansas and Wisconsin, leadership committees are responsible for the determination of staffing levels and patterns either within a single house or for both chambers.

Proportional allocation of resources is not required by constitution or statute in any state legislature. In fact, however, a number of states routinely attempt to achieve proportional balance in staffing. Personal staff commonly are assigned with little regard to party affiliation; and because of the predominance of central nonpartisan staffing in most legislatures, minority party members have comparable access to staff

resources. In Connecticut, for example, every rank-and-file member has access to the same staff resources, and each of the four caucuses is granted the same level of staffing. The session staff is apportionned between the majority and minority parties on a ratio approximating party balance. Legislative leaders receive the same number of staff, regardless of party. Another example comes from Wisconsin where personal staff is awarded equally regardless of party affiliation and caucus staffs approximate party strength with some additional allocations to the minority staffs. Leaders and chairs receive additional staff in recognition for their unique responsibilities, but the number of additional staff is modest. Finally, I would note Pennsylvania, where there is a tradition of dividing resources and staffing equally between the two parties. With the exception of the presiding officer's account and the offices of the chief clerk and House or Senate administration, the majority and minority leadership accounts and staffing for committees are the same. In addition, individual members receive similar allocations.

As I indicated earlier, there is no state legislature which currently is mandated by statute or constitution to allocate staff resources on a proportional basis. There are a few instances, almost exclusively dealing with session employees, where the legislature determines its staffing pattern in detail by a statutory act. One state, Pennsylvania, has had some experience with a permanent staffing pattern spelled out in statute. In 1981, the Pennsylvania Senate leadership reviewed its structure and concluded that its statutory payroll was "increasingly difficult to utilize because of its inflexibility. Its specificity, which seemed desirable when it was established, has made it difficult to administer..."

Legislative staffing patterns are influenced by a variety of factors including staff size, degree of party competition, leadership power, and political tradition. No one factor appears to be the principal determinant in all states. Furthermore, there is no one structure that ranks best. Whether consciously or unconsciously determined, significant trade-offs are made between the strengths and weaknesses of each staffing type. Staff increases for committees and members are likely to result in more responsive staff services but decreased management control. Highly partisan staff structures foster a competitive and innovative policy environment, but also may result in substantial duplication of staff services. Fragmentation and specialization of staff services often go hand-in-hand offering subject-matter expertise but compounding management difficulties.

I would emphasize that there is no best way to organize, manage and staff a legislature. Gann is unique in that it would impose statutory restrictions on matters traditionally and appropriately governed by legislative rules and determined by the political processes of a representative body.

Let me close by giving you some insights into the deliberations of the Legislative Organization and Management Committee of the NCSL. This committee currently is focusing on the legislature and its relationships with various external groups -- citizens, the media, the traditional lobby corps, and the other branches of state government. In its initial discussions, the committee directed its attention to the uneasy and even stormy relationships which have developed recently between legislatures and the rapidly proliferating citizen groups. Citizen lobbyists are more

numerous and more prominent in state legisaltive halls. Many citizen groups have resorted more recently to initiative, referendum and recall to affect the goals which they seek. And the most recent phenomena is that being discussed here -- a direct attack through the initiative process on the legislative institution.

It is the committee's belief that these stormy relationships have been brought about by a lack of trust in legislators, a lack of understanding of the pluralistic nature of representative government and the legislative process in particular, and an increasing distance between the legislature and the public caused in part by the erosion of the citizen legislature. The Legislative Organization and Management Committee is attempting to develop some suggestions and strategies for improving legislative relations with citizen groups. While that effort is not complete, let me leave you with some of the key points which the committee has under consideration:

- Emphsisze efficiency and effectiveness in legislative operations whether in full-time or part-time legislatures.

- Strengthen the role of the legislature, and legislative leaders in particular, in setting the public policy agenda, anticipating critical issues and formulating timely legislative responses.

- Place legitimate controls on the direct democracy processes of initiative, referendum and recall.

- Promote greater citizen understanding of and public participation in the legislative process and public policymaking in state government.

- Improve access by and communications with citizen groups, constituents and the public at large.

- Restore public confidence and faith in the concepts of openness, self-discipline and ethics in government.

- Emphasize institutional needs and resources over the desires, wants and preferences of individual members and staff.

TESTIMONY

OF

ROBERT C. POST[1]

The Gann Initiative is a complex and ambitious attempt to restructure the internal operating procedures of the California legislature. If enacted it will have profound and far-ranging effects.

Today, however, I will not discuss the policy implications of the Gann Initiative. I will instead confine myself to an analysis of its consitutionality under the California Constitution. And I will confine that analysis to those provisions of the Initiative that prescribe the manner in which the houses of the California legislature can select legislative committees and adopt rules of internal procedure.

Any such analysis must begin with a discussion of the power of the initiative, which in California is set out in Art. 2, Sec. 8 of the state Constitution. Section 8 defines the initiative as "the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them."

Section 8 thus defines two different kinds of initiatives: those that propose statutes, and those that propose constitutional amendments. Initiative statutes, like legislative

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statutes, are subject to the restrictions of the California Constitution. This principle was enunciated over half a century ago, Wallace v. Zinman, 200 Cal. 585 (1927), and was strongly reaffirmed by the California Supreme Court as recently as last September. At that time the Court held that initiative statutes "are subject to the same constitutional limitations . . . as are other statutes." Legislature of the State of California v. Deukmejian, 34 Cal.3d 658, 675 (1983).

The Gann Initiative purports to propose a statute. It is entitled the "Legislative Reform Act of 1983," and it is offered as an amendment to the Government Code, rather than to the Constitution. The Gann Initiative, therefore, must conform to the California Constitution.

The California Constitution provides that "each house" of the legislature shall "adopt rules for its proceedings." Art. 4, Sec. 7. This provision is one of the oldest in our present state constitution, dating back to its original 1849 version. In addition, Section 11 of Article 4 of the California Constitution provides that "either house" of the legislature "may by resolution provide for the selection of committees necessary for the conduct of its business."

The Constitution thus gives to each house of the legislature the independent authority to make rules and to constitute committees. Notice that these powers are distinct from the power to enact statutes, since the California Constitution provides that statutes can only be enacted by the concurrence of both houses of the legislature. Art. 4, Sec. 8. Moreover, unlike statutes, the rules adopted by either house need not be presented

to the Governor for approval or rejection. Art. 4, Sec. 10. Similarly, neither house need present to the Governor any "resolution" pertaining to "the selection of committees."

In contrast to the federal Constitution, which provides only that each house of Congress "may determine the Rules of its Proceedings," the California Constitution imposes an affirmative obligation to create such rules, stating that "Each house shall . . . adopt rules for its proceedings." This difference, I think, reflects the importance which the framers of the California Constitution attributed to the creation of parliamentary rules of proceeding.

This importance was generally recognized by nineteenth-century Americans, who believed such rules to be essential to the proper functioning of a legislature. Such rules were thought to be a significant cause of the success of American legislatures, in contrast to those of France or Latin America. In 1859, for example, Francis Lieber, in an influential treatise On Civil Liberty and Self-Government, celebrated the "development of parliamentary practice, or rules of proceeding and debate," which he believed to constitute "a most essential part of our . . . constitutional, parliamentary liberty":

> "Every other nation of antiquity and modern times has severely suffered from not having a parliamentary practice such as [England and America] possess[], and no one familiar with history and the many attempts to establish liberty on the continent of Europe or in South America, can help observing how essentially important that practice is to us, and how it serves to ease liberty."

(Philadelphia: J.B. Lippencott and Co., 192.)

In 1866, soon after the adoption of the California

Constitution, the California Supreme Court expressed these commonly held beliefs when it held that the power of the legislature to govern its own proceedings was so essential to its ability to function, that the power should be viewed as inherent and existing prior to the enactment of the state Constitution. Rejecting a challenge to the inherent power of the Senate to investigate charges of bribery, the Court stated:

> "A legislative assembly, when established, becomes vested with all the powers and privileges which are necessary and incidental to a free and unobstructed exercise of its appropriate functions. These powers and privileges are derived not from the Constitution; on the contrary, they arise from the very creation of a legislative body, and are founded upon the principle of self-preservation. The Constitution is not a grant, but a restriction upon the power of the Legislature, and hence an express enumeration of legislative powers and privileges in the Constitution cannot be considered as the exclusion of others not named unless accompanied by negative terms. A legislative assembly has, therefore, all the powers and privilges which are necessary to enable it to exercise in all respects, in a free, intelligent, and impartial manner, its appropriate functions, except so far as it may be restrained by the express provisions of the Constitution, or by some express law made unto itself, regulating and limiting the same. (Cush. Law and Practice of Legislative Assemblies, p. 221.)
>
> "What powers and privileges, therefore, a legislative assembly takes by force and effect of its creation are to be ascertained by reference to the common parliamentary law. These powers and privileges are . . . as follows: . . .
>
> "3. To establish its own rules of proceeding."

Ex parte McCarthy, 29 Cal. 395, 404 (1866).

In 1905 the California Supreme Court, in reviewing the inherent power of the Senate to expel members for malfeasance in office, reaffirmed the holding of McCarthy: "The constitution provides that the Senate `shall determine the rule of its proceeding, and may, with the concurrence of two thirds of all the members elected, expel a member.' (Const., art. IV, sec. 9.)

If this provision were omitted, and there were no other constitutional limitation on the power, the power would nevertheless exist and could be exercised by a majority." French v. Senate, 146 Cal. 604, 606 (1905). See Dean v. Kuchel, 37 Cal.2d 97, 100 (1951).

The power to select committees, like the power to create rules of proceeding, has traditionally recognized as an essential and inherent power residing in each house of the legislature. Even before this power was explicitly recognized by the state Constitution, for example, the California Supreme Court had held that "it is well settled by practice and decision, that incidental and auxiliary to the express power conferred, the legislature and each house thereof has the inherent and implied power to appoint committees for the purpose of obtaining information concerning proposed legislation." Petition of Special Assembly Interim Committee, 13 Cal.2d 497, 503 (1939).

This conclusion is consistent with traditional interpretation of the federal Constitution, which accords to each house of Congress "not only such powers as are expressly granted to them by the Constitution, but such auxiliary powers as are necessary and appropriate to make the express powers effective." McGrain v. Daugherty, 273 U.S. 135, 173 (1927). One of these necessary and appropriate powers is that of creating a committee of investigation and compelling testimony through the sanction of contempt. The United States Supreme Court has even gone so far as to conclude that "Congress could not divest itself, or either of its Houses, of the essential and inherent power to punish for contempt, in cases to which the power of either House properly

extended." In re Chapman, 166 U.S. 661, 671-72 (1897). See Jurney v. MacCracken, 294 U.S. 125, 151 (1935).

These priniciples of constitutional interpretation are widely shared by California's sister states.[2] But although they are widely held, one might object that it is equally universal for state legislatures, including the California legislature, to pass statutes, rather than rules, to govern their own procedures. The argument might thus be made that if these inherent powers can be governed by statute, then they are not constitutionally inviolate.

The problem with this argument is that it overlooks the fact that each house of a legislature must concur before a statute is passed. Thus when a legislature enacts a statute that governs its own internal proceedings, it is as if each house has separately passed a corresponding rule of internal procedure. Procedural statutes may thus be viewed as simply another form of such unicameral rules.

Statutes governing interal procedure have in fact been interpreted in this manner. In 1896, for example, the Court of Appeals of the District of Columbia considered a challenge to a statute providing that if a witness refused to answer questions before an investigating committee of the United States Senate,

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2 See, e.g., Opinion of the Justices No. 185, 179 So.2d 155, 158-59 (Ala. 1965); Missouri v. Atterbury, 300 S.W.2d 806, 810 (Mo. 1957); Jory v. Martin, 56 P.2d 1093, 1095 (Or. 1936); Terrell v. King, 14 S.W.2d 786, 789-90 (Tex. 1929); State ex rel. Robinson v. Fluent, 191 P.2d 241 (Wash.), cert. denied, 335 U.S. 844 (1948); R.K. Gooch, Legal Nature of Legislative Rules of Procedure, 12 Va. L. Rev 529, 530-31 (1926).

the matter could be referred to the District Attorney for the District of Columbia for presentation to a Grand Jury. The defendant argued that the statute was unconstitutional because "an unauthorized interference with the constitutional power of either House of Congress to make its own rules and regulations for the conduct of its business." Chapman v. United States, 8 App. D.C. 302, 310, writ of error denied, 164 U.S. 436 (1896). The Court rejected this challenge, however, on the ground that "a rule is not less a rule because it takes the form of a statute."[3] Ibid.

It follows from this analysis that a statute setting forth internal legislative procedures, being in essence the equivalent of a rule adopted simultaneously by both houses of the legislature, cannot eliminate the discretion of each house in the future to adopt a contrary rule of proceeding. This was the position taken by Luther Stearns Cushing, the preeminent nineteenth-century authority on legislative practices. Cushing's treatise, Elements of the Law and Practices of Legislative Assemblies in the United States of America, which for a number of years during the nineteenth-century was specifically incorporated by the California Assembly,[4] and on which the California Supreme Court relied in Ex parte McCarthy, states:

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[3] Cf. Tayloe v. Davis, 102 S. 433, 435 (Ala. 1924)(joint resolution interpereted as the simultaneous adoption of unicameral rules).

[4] See Assembly Rule 72 (1867)(1876).

> "The principle, that each branch of a legislative assembly has a right to determine its own rules, is deemed so important that where it is inserted in the constitution of a State, it has been doubted, whether it was competent for the legislature of such State, by law, to provide rules for the government of its respective branches, which should bind them and supersede their authority to make rules for themselves."

(2d ed. 1866), at 247. See id. at 311.

Modern authority reaches the same conclusion in a more unqualified manner. For example, Mason's Manual of Legislative Procedure (1979), which is specifically incorporated by both the Senate Rules and the Temporary Joint Rules,[5] flatly asserts that "The house and senate may pass an internal operating rule of its own procedure that is in conflict with a statute formerly adopted." Id. at 36.

Although, as you might imagine, there have not been many cases in which this issue as arisen, there are a few, and they are consistent with Mason's position. In 1975, for example, the Georgia Supreme Court held that either house of the legislature could by internal rule override Georgia's "Sunshine Law," which provided that certain committee meetings be open. Coggin v. Davey, 211 S.E.2d 708 (Ga. 1975). The Court stated bluntly that "We do not believe that it can reasonably be argued that the House or Senate cannot pass an internal operating rule for its own procedures that is in conflict with a statute formerly enacted." Id. at 710-11.

Similarly, the Supreme Judicial Court of Massachusetts has

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[5] See Senate Rule 20 (1983); Temporary Joint Rule 31 (1983).

held that "procedural statutes are not binding upon the Houses . . . . Either branch, under its exclusive, rule-making constitutional prerogative, is free to disregard or supersede such statutes by unicameral action." Paisner v. Attorney General, 458 N.E.2d 734, 740 (Mass. 1983).[6]

I hope you will forgive my setting forth these principles at such tedious length, but they are fairly important, since they establish that the inherent power of each house of the California legislature to govern its own proceedings cannot be impaired, even by statute. They can only be diminished by constitutional amendment. This is particularly true with respect to those inherent powers that are specifically recognized and authorized in the Constitution itself, like the power to adopt rules or to select committees.

The central thrust of the Gann Initiative, however, is to directly impair these inherent powers in the name of "legislative reform." For example the Initiative precludes each house from adopting its own rules except by two-thirds majority. (Section 9920). It is clear, however, that the inherent power to adopt rules of internal procedure must include the power to determine how these rules of procedure are to be adopted. See, e.g., Assembly Rule 6 (1983). The Gann Initiative attempts to strip the legislature of this inherent constitutional power.

Similarly, Section 9922 of the Gann Initiative purports to instruct each house of the legislature as to how standing

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[6] See Opinion of the Justices, 170 A.2d 657 (Me. 1961); cf. Schweizer v. Oklahoma, 47 P. 1094 (Okl. 1897).

committees are to be selected. But the power to select such committees is explicitly given to each house by Section 11 of Article 4 of the state constitution, and it is in any event implicit in the power given to each house by Section 7 to "adopt rules for its proceedings." This power is directly impaired by Section 9922 of the Gann Initiative.

Other important provisions of the Gann Initiative also conflict with the constitutional power of each house of the legislature to the adopt its own rules and select its own committees. The Initiative, for example, defines and establishes Rules Committees in both the Assembly and the Senate; it establishes the powers of these Rules Committees and sets out the voting requirements appurtinent thereto. (Sections 9911, 9912, 9915, 9916). In the most obvious possible manner, these provisions directly restrain the Senate and the Assembly from altering their own rules of proceeding or selecting their own Rules Committees in a manner inconsistent the Gann Initiative.

If the legislature were to attempt to enact a statute embodying the reforms of the Gann Initiative, such a statute would be valid to the extent that each house votes, in effect, to amend its rules in conformity with the statute. But then each house could, by a unilateral change in its internal rules, alter the terms of such a statute. Such is not the case, however, with the Gann Initiative. The Initiative will not be adopted by each house of the legislature, but by the people as a whole. And the ability of even both houses of the legislature to alter the Gann Initiative is called into question by Art. 2, Sec. 10 of the state Constitution, which provides that an initiative statute

cannot be amended or repealed, unless by a subsequent statute "approved by the electors." The Gann Initiative, therefore, unlike a procedural statute, cannot be construed as the simultaneous adoption of unicameral rules.

All this might be unobjectionable if the Gann Initiative were offered as a constitutional amendment. But it is not; it proposes instead a statute, and, as previously discussed, any such initiative statute must comply with applicable constitutional restraints. These restraints establish and protect the power of the separate houses of the legislature to adopt rules and to select committees. To the extent the Gann Initiative impairs this power, it is unconstitutional.

This conclusion is reinforced by a careful analysis of the language of Section 8 of Article 2 of the California Constitution, which creates only two kinds of initiatives: those that "propose statutes," and those that propose "amendments to the Constitution." If an initiative proposes something other than a statute or a constitutional amendment, it is not authorized by Section 8. The California Constitution clearly distinguishes "rules" from "statutes." Compare Art. 4, Sections 8, 10, with Art. 4, Section 7. Rules can be adopted unicamerally; statutes cannot. Statutes must be presented to the Governor for approval or disapproval; rules need not be so presented to the Governor.

Section 8 does not authorize an Initiative to propose "rules." It is clear, I think, that initiatives are not authorized to propose rules so as to protect the separate houses of the legislature in their constitutional prerogative to govern

their own proceedings. This inherent power can be curtailed only by an initiative proposing a constitutional amendment. Since the Gann Initiative does not propose such an amendment, and since it instead clearly proposes the kind of "rules" that the Constitution authorizes each house of the legislature separately to adopt, it follows that the Gann Initiative is not authorized by Section 8.

Finally, I would observe that this conclusion is buttressed by the recent decision of the Supreme Judicial Court of Masschusetts in Paisner v. Attorney General, 458 N.E.2d 734 (Mass. 1983). The Massachusetts Constitution, like the California Constitution provides for an initiative process in which the people can propose a "constitutional amendment or law." The Massachusetts Constitution, like the California Constitution, also gives to each of its legislative houses the power to determine its own internal rules of proceeding. In Paisner the Supreme Judicial Court determined that an initiative which attempted to alter these internal rules of proceeding in a manner similar to the Gann Initiative was unconstitutional. The Court reasoned that such an initiative was constitutionally unauthorized because it proposed "rules" rather than "laws." It concluded that "the rules of future sessions of the House or the Senate cannot under the Constitution be controlled" by a statutory initiative. Id. at 740.

The same conclusion should obtain under the California Constitution with respect to the Gann Initiative.

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ROBERT W. NAYLOR
ASSEMBLYMAN, TWENTIETH DISTRICT

ASSEMBLY REPUBLICAN LEADER

May 4, 1984

STATEMENT BY ASSEMBLY REPUBLICAN LEADER BOB NAYLOR

The California Legislature is suffering from a serious crisis in public confidence. Lawmakers are perceived by many voters as arrogant big spenders who are more interested in gaining reelection than in serving the needs of the people.

Proposition 24 on the June ballot, the so-called Gann Initiative, will go a long way toward restoring public confidence in the Legislature and returning us to a system where lawmakers represent not themselves, but the people of California.

Perhaps it is difficult for anyone other than a committed observer of the Legislature to understand how an initiative which deals with issues such as legislative committees and 2/3rd vote requirements can help make the Legislature represent the people again.

I have come here today as a member of the Legislature to offer my observations on why the California Legislature is sorely in need of reform and why the public should support Proposition 24.

Proposition 24 has four main goals:

1. Cut legislative spending. The first goal is to reduce legislative spending and set a limit on any future runaway spending increases.

Even some of the initiative's most vocal opponents admit that legislative spending has reached absurd proportions. There are virtually no checks on legislative spending and there is far too little public scrutiny of how the Legislature is spending the taxpayers' money.

Since 1978, the Legislature has more than doubled its budget -- **this is equal to three times the increases enjoyed by the rest of state government and by our schools. The Legislature now spends $1 million annually per legislator.**

The Gann Initiative would require an immediate 30 percent cut in legislative spending, returning to 1978 levels after adjusting for inflation. Any future spending increases could be no higher than the yearly increase in the state's General Fund.

2. Curb spending abuses. The second goal of the Gann Initiative is to require major spending decisions to be made in the open with a hearing and vote. Perhaps the worst spending abuses now taking place in the Legislature are the private consulting contracts the current legislative leadership has been doling out to political cronies.

These contracts include a $600,000 to $800,000 open-ended contract being paid to a high-priced San Francisco attorney. Among other things, the attorney was paid to fight the Sebastiani initiative and the reapportionment referendum -- measures initiated by taxpayers.

Right now, one man's signature is enough to unleash tens of thousands of dollars for "consulting" contracts. Contracts are awarded in secret, with no public hearing or committee vote, and are often for part-time services yielding no written report of the work performed. The present system of secrecy encourages abuse.

Under the provisions of the Gann Initiative, no such contracts could be awarded without a public hearing and a public vote.

3. "Sunshine" on the legislative process. The third goal of the initiative is to guarantee public access to the legislative process. These "sunshine" provisions include a return to the 130-year-old tradition of requiring a 2/3rds vote for suspensions of legislative rules.

The public's and the news media's only hope of keeping track of what the Legislature is up to lies in the rules and procedures which by law we are supposed to follow. But the present leadership decided to throw out the old system and allow just a bare majority to suspend the rules. The result is that rules which govern whether a bill must have a hearing and how long in advance the public must be notified of the hearing can be easily suspended.

The Gann Initiative would restore the tradition of requiring a 2/3rds vote for rule suspension. It also would prevent "end runs" around the process of public hearings and debate which can now be accomplished through the infamous conference committee process. These reforms at least give the public a fighting chance of keeping an eye on the shenanigans politicians are likely to pull when there are no procedural rules.

4. Make the Legislature representative again. The fourth, and the most important goal of the Gann Initiative, is to reduce the power the Speaker now has to distort the legislative process through absolute control of the committee system. At present, legislation which would be supported by a majority of legislators if it made it to the floor, is frequently killed in committee.

The Speaker, through his sole and absolute power to appoint all committee chairmen and members, frequently stacks committees with persons representing a minority view. The committee process is thus used to rob the voters of a truly representative forum for the debate of issues. We have in a sense a tyranny of the minority controlling the Legislature.

The Gann Initiative would effect several changes designed to make the Legislature more representative. Under Gann, no single legislative member would have the inordinate power, now possessed by the Speaker, to pass or kill legislation. Instead, most powers would be placed in bi-partisan Senate and Assembly Rules Commitees. These committees would assign all bills to committee, appoint committee chairs and vice-chairs and allocate funds and staffing proportionally, instead of on the basis of political favoritism.

Just these modest changes would release the committee system from the tight grip of the powerful speaker, thereby making it more likely that legislation the people want receives a full public debate and vote.

The charge by those opposed to the initiative is that its reforms would somehow give the minority party the power to block all legislative action, thereby destroying the "majority rules" system. This charge is hardly substantiated. A majority vote is required to pass laws in the Legislature. This would in no way change under the Gann Initiative reforms.

Also, it should be noted that when the founding fathers set up a "majority rules" system, they did not envision oppression by the majority and specifically set down safeguards against such oppression. Rules protect the minority and preserve the minority's rights. Abrahar

Lincoln spoke of a "majority held in restraint by Constitutional checks and limitations" and Thomas Jefferson said "though the will of the majority is in all cases to prevail, that will to be rightful, must be reasonable." Majority rule does not mean granting the majority a license to do as it pleases. And yet this is the system under which the California Legislature is now operating and which the present leadership defends.

The primary significance of the Gann Initiative is that it addresses an urgent question being asked more and more frequently: To what extent does the state Legislature really represent California anymore? The evidence speaks strongly to the fact that the Legislature is controlled by politicians fundamentally out of step with the concerns and beliefs of most Californians.

Perhaps the best evidence that this is true is the fact that most major changes in government policy in the last six years have come from the people by initiative; not the Legislature. Proposition 13, capital punishment, the repeal of the inheritance tax, the Victims Bill of Rights, all contained measures which were first prevented from becoming law by the current legislative leadership. This caused a frustrated populace to take matters into its own hands.

Proposition 13, the historic tax-cutting measure, was the first major rejection by the people of the tax-and-spend agenda advocated by the present legislative leadership. The Victims' Bill of Rights was a collection of tough-on-crime laws bottlenecked for years by the Assembly Criminal Justice Committee at the Speaker's behest. The people also rejected the cynical gerrymandering of election districts by the present leadership when they threw out the Legislature's reapportionment plans two years ago.

Now, as an election again draws near, the Gann Initiative has surfaced, more than anything else, as a reaction to the growing conviction that the California Legislature no longer represents the people and is not likely to do so under the present system.

TESTIMONY OF

DANIEL H. LOWENSTEIN

before the Senate Judiciary Committee,
Los Angeles, May 4, 1984.

My name is Daniel H. Lowenstein. I am a law professor at UCLA. Previously I have served as Deputy Secretary of State of California and chairman of the Fair Political Practices Commission.

By creating today's forum for discussion of the pros and cons of Proposition 24, the Senate Judiciary Committee provides an important service to the people of California. To the extent such meetings encourage the news media to report the information and arguments relating to ballot measures prominently and on a regular basis, we may diminish the importance of overwhelming campaign spending in initiative campaigns.

Many lawyers believe, with good reason, that Proposition 24 will be declared unconstitutional if adopted. In my testimony, however, I shall assume for the sake of argument that it is constitutional and will go into effect if it is approved.

I am opposed to Proposition 24 because I believe its main thrust is an assault on the principle of majority rule, and a handing over of more power and influence to special interests. In both these respects, Proposition 24 will devalue the votes of individual Californians.

Proposition 24 is an assault on majority rule because it divides effective power so closely between the two major parties that it will make relatively little difference which party wins an election. This will reduce the responsibility of the

majority party to the electorate, since they cannot be blamed for what they do when their majority status does not give them effective control of the legislature.

Many observers of contemporary American government, and California government in particular, are concerned by the inability of parties to offer meaningful programs to the public, to be held accountable for the success or failure of those programs, and thereby to encourage the active participation in politics by the voters. In my opinion, Proposition 24 will make this problem worse.

Proposition 24 will improve the position of powerful special interest groups in two distinct ways. First, it will do so by its indiscriminate cuts in the legislative budget. There are abuses in legislative spending, particularly in the employment by both parties of individuals chosen for their campaigning skills rather than their expertise in public policy questions. Over the years the legislature has reduced the magnitude of these abuses, although it has not eliminated them. But nothing in Proposition 24 guarantees that it will have the slightest effect on the abuses. Faced with hard choices about which staff members to cut, legislators, who are not saints, may well choose to save the most politically valuable individuals at the expense of those with high substantive proficiency.

Why should this be of great concern to the average citizen? Legislators do not have the time themselves to become experts on most of the complex matters they deal with. They have to rely on others for the information they need to form judgments. It

is a commonplace to observe that the interests represented by lobbyists in Sacramento are extremely diverse, but these interests are not represented equally. The vast majority of lobbying expenses are incurred in behalf of specialized groups such as business, the professions, labor and agriculture.

There is absolutely nothing wrong with these groups asserting their interests, but these interests sometimes conflict with those of the average citizen. Who can provide the citizen's side of the story, to balance the presentation of the lobbyists? All too often the only answer is a legislative staff member. If Proposition 24 is adopted, that staff member probably won't be there.

The second reason Proposition 24 is a bonanza for special interests is that it drastically weakens the power of the leadership. Special interest groups can use campaign contributions and other methods to bring enormous pressure to bear on the legislature. It takes power to countermand such power. A strong speaker and president pro tem can often stand up to the special interests, when individual legislators cannot. Those who believe the power of special interests could not possibly be greater than it is may be in for an unpleasant shock if Proposition 24 passes.

Supporters of Proposition 24 seem to belieive the leadership has dictatorial power over the individual members. This point of view ignores the fact that the leaders hold their positions at the mercy of the individual members of their own party in the legislature. The recent history of both parties in both houses demonstrates that this is no hypothetical constraint on the

leadership.

Proposition 24 does have some good points. Foremost among these are the financial disclosure provisions. In addition, a selective pruning of the legislative budget could undoubtedly be accomplished in a beneficial way, but as I stated earlier, Proposition 24 uses a meat axe where a scalpel is needed to do any good. Overall, and by a wide margin, the harm Proposition 24 will cause outweighs the minor benefits.

It is natural that those in and around the legislature will be preoccupied with the immediate effects of Proposition 24. Which party will gain and which will lose? Who will gain in power? And so on.

But the rest of us will be living with Proposition 24 for a long time, and we had better look at what it will do to our system of government over the long run. Proposition 24 is well-intentioned and has a few good provisions, but its overall impact will be profoundly undemocratic. Proposition 24 is a sugar-coated lemon.

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SHARON SCHUSTER
President

PROPOSITION 24 - THE TYRANNY OF REFORM

May 4, 1984

Newspaper bylines have described Proposition 24: "Gann is At It Again," "How to Wreck the Legislature," "Voter Trick or Treat?" and "Tyranny or Reform?"

Simply put, the initiative seeks, among other things to reduce what the Legislature can spend on itself by 30% and to overthrow the normal rules of lawmaking to give small minorities a veto over the legislative process.

On the first topic, how much money the Legislature spends on itself, Gann has hit a sensitive nerve because everybody knows that whatever it is, is probably too much. In fact, it constitutes only 1/2 of 1% of the total state budget and has not increased 30% over inflation in the past seven years as Gann says it has.

Further, in 1981, in a ranking of state legislatures, California was 27th in expenditures based on dollars of per capita personal income among the 50 states. California is frequently referred to in textbooks and periodicals as top, along with New York, in overall legislative quality.

That quality is directly related to the 2,200 employees who now toil in Sacramento helping legislators analyze and understand the complex forces affecting school financing, medical care, agri-business, criminal justice, the environment and other aspects of a complex society. In short, California has one of the best legislatures in the country because it hires a research capability at least equal to that of the executive branch. And this is the legislative budget that would take the draconian cut should Gann pass.

This controversial 1/2 of 1% also pays for legislators' district and Sacramento office staff whose most important function is communicating with constituents. Senator Mello has told AAUW that his office receives and responds to 5,000 pieces of mail a year. He requires each letter be answered within five days. Do you believe that if a 30% cut were made, it would come here? No because no legislator would cut off the life blood of reelection, not even lengthen the turn around time for answering constituent letters, if another choice exists. And it does. It is the legislative consultant staff that would take the entire 30% whack. AAUW does not want the legislature any more dependent for information for decision making on lobbyists and special interests.

The second topic, taking the power to appoint committee members from the Assembly Speaker and the Senate Rules Committee and giving it to the party caucuses, then requiring virtually all Rules Committee votes of any substance to meet the two-thirds test concerns us. The result would be that a handful of members of the minority caucus would virtually control the legislature. If Gann were in place now, you could control

the Senate, if you control eight of its members, since there are 15 Republican Senators and eight make a majority of their caucus.

They appoint two of the five members of the Senate Rules Committee where all expenditures require a two-thirds vote. When the two minority members of Rules fail to vote the caucus way, they can be replaced with two who will. Thus the minority could stymie the entire legislative process by refusing to allow bills to be heard, not to mention passed, refusing to approve payment of an errant Senator's office expenses, refusing to authorize staff for unpopular committees, etc.

If the Legislative Analyst characterized the Governor's budget as the "Property Tax Increase Act of 1984," the Republican caucus could halt the printing of future analyses and refuse to pay the Analyst's staff. The Auditor General could be kept from conducting an audit. All members of the legislative staff, the Legislative Analyst, Legislative Counsel, Auditor General. perhaps even the chaplain would have political loyalty oaths.

In short, the reforms of Proposition 24 are more accurately described as a system of minority tyranny. It would institutionalize partisanship in the day to day operation of the Legislature. Decision making would shift to the party caucuses and the caucus agenda would become the legislature's agenda. That is of great concern to AAUW because party caucuses do not hold open meetings.

In the highly regarded California Public Administration, a publication of the California Journal. the observation is made, "Political parties

are weak in California. There is no stong party discipline that determines how members of the Legislature will vote on any issue. Party positions are rarely taken on bills, and the legislators vote more in accordance with the views of their constituents and their own consciences than with the views of party leaders." AAUW members are anxious to keep it that way, regardless of which party is the majority.

The position of the American Association of University Women is based on legislative policy that supports open and democratic decision making and improvement of governmental structure. These policies are adopted at our state convention by delegates of our 33,000 member California State Division.

WEST COAST REGION, NAACP
1975 Sutter
Suit I
San Francisco, CA.
94115
415-931-3243

May 4, 1984

Good afternoon, Mr. Chairman and members.

My name is Henry Dotson, and I am the Vice-President of the Southern Area Conference of NAACP branches. Today, I will be reading for you a statement prepared by Mrs. Virna M. Canson, who is, as I am sure you know, the Director of the Western Region, National Association for the Advancement of Colored People. Mrs. Canson sends her greetings to the Joint Committee, her thanks for being invited to testify and her regrets that scheduling conflicts preclude her being present at this hearing.

You may be interested to know that NAACP and the National Urban League are convening a National Summit on the State of the Black Family at Fisk University in Nashville, Tennessee, May 3-5th. Mrs. Canson is attending this important meeting.

If the people of California fail to examine the Gann initiative in the broad context or fail to relate it to an

insidious, pervasive drive by well financed, right wingers to capture the governing processes of our Republic, we will hand over to this destructive element the power to paralyze our legislature.

As I prepared for this presentation, each time I reviewed Proposition 24, another frightening aspect became apparent.

The first question I had to ask myself, and I also ask you and Mr. Gann is, "Would there be a Proposition 24 if the speaker of the Assembly were a white man?"

Far too many people will seek to avoid raising that question even though in their consciousness, just as in mine, the piercing question lies. We would all do well to recognize the presence of this aspect of Gann's offensive.

It is not enough to examine Gann from the technical, legal perspective. Gann must be viewed within the context of attempts to diffuse the power of the grass roots. In addition, this initiative cannot be separated from recent efforts to affect the Legislative reapportionment process. Even the current efforts of Gann's partner, Howard Jarvis, in further tying the hands of local government through his "Jaws IV", are a part of the right wing, moral majority effort to disrupt representative government.

Indeed, we appear to be moving away from representative government. Are we on a path that will end with the destruction of our Republic?

Will we be left with a form of "minority" rule through license to obstruct? If so, racial minorities, women and others will see their hopes dashed and rights eradicated.

We in the NAACP, despite the many difficulties we face, historically and presently carry on our work with faith in the processes of the judicial, legislative and administrative arms of government. We have felt, and still feel, that our petitions for redress in these areas have at least a fair chance.

Blacks have been willing to take their chances with the established forms of government. Where we saw an unjust law, we put our best efforts forward to change that law because we felt that, in most instances, a vote of the majority of the members of a given house would support our petitions for change. Never did we expect to encounter statutorily sanctioned obstruction of the will of the majority vote of the Legislature.

Unfortunately, the initiative process in California has lost its historical meaning. It has been the experience of NAACP that constitutional rights of minorities are placed before the electorate by vested, economic interests. As an example,

Proposition 14 in housing and Proposition 1 in equal educational opportunities.

Why should a political party unable to elect a majority in the Assembly or Senate use its super-rich resources and computer created populations to continue to obstruct the representative form of government? Honesty is no longer a component of the initiative process. Money and computers are creating false illusions while more and more people are turning their backs and leaving the electorial process to fewer and fewer people.

Registration statistics in California reflect a continuing advantage for the Democratic Party. However, Republicans do win elections. Gann, Sebastiani, and that wing of the Republican party, pose a threat to Republican victories in a much more devastating way than "heads up" competition from Democrats. Having a majority already in California, would not it seem only logical that should Proposition 24 pass, the strategy of the Democrats would move toward assuring that there existed in both the Assembly and Senate a two-thirds majority? Is this the kind of arrangement that is best for the two-party system and the citizens of California?

We think not.

It is for the reasons I have set forth--the serious threat to the two-party system; the costly obstruction of the will of a majority of the Legislature; infringement on the rights of the citizens and representative government--that the NAACP vigorously opposes the Gann offensive. Thank You.

Members of the Committee

My name is Abby Leibman. I appear before you on behalf of California Women Lawyers, and I thank you for providing this opportunity for comment on the Gann Initiative.

California Women Lawyers is a statewide bar association. It has nineteen affiliate local women's bar associations as well as individual members and represents the interests of the thousands of women lawyers throughout the State of California.

As lawyers, we cannot help but have a profound interest in the legislative process. I am here today to express to you California Women Lawyers' concerns regarding the impact of the Gann initiative, if adopted, on the integrity and effectiveness of our legislative processes.

We have four areas of particular concern.

First, we are concerned with the various provisions of the Gann initiative that would require 2/3 votes of the Assembly Rules Committee, the Senate Rules Committee and the Joint Rules Committee. A 2/3 vote would be required, as we understand it, for any decisions regarding expenditure of funds or distribution of resources, including hiring or dismissing staff. A 2/3 vote would be required to establish special or select committees and subcommittees as well as joint committees. And a 2/3 vote of the Assembly Rules Committee would be required to confirm statutory appointments to commissions and the like made by the Speaker of the Assembly.

These 2/3 vote requirements, although directed toward

procedural matters, would have an inevitable substantive effect. Much of the important legislation that has been adopted in recent years to provide equal opportunity for and address the special needs of women and minorities has emerged from committee reports and investigations into these problems and needs. We are talking about bills affecting a wide variety of economic issues, family issues, and civil rights bills affecting the social treatment of women and the family and of other underrepresented persons. These bills vary from pay and workplace protections to laws regarding community projects, spousal and child support and child care. They include nursing home legislation and criminal law reform, as well as business, education, social care programs and general budgetary issues.

Often bills addressing these issues are the product of staff hired for these particular purposes and of the efforts of special and select committees and certainly major legislation could not be carried through without such staff. If the staff is not hired, if the studies are not funded, if the committees are not established, the question of whether bills addressing the concerns of women should be adopted will be moot. Such bills will never be drafted. They will never reach the floor for a vote. California will not maintain its posture as one of the most progressive states in the union, a model for the country and uniquely responsive to the social fabric of this state.

So what is the problem with requiring a 2/3 vote of the Rules Committees to institute such efforts? The problem is that

historically progressive legislation in this country has garnered majority support, but rarely 2/3 votes. Thus the 2/3 vote requirements contained in the Gann initiative may operate as a procedural device to obstruct change and progress. They certainly create the potential for obstruction by a small number of committee members. A mere 1/3 of the committee can effectively veto efforts at change at their very inception by vetoing allocation of funds, appointment of staff and establishment of the necessary committees.

A second major problem with the Gann initiative is its requirement that the two major parties have equal representation on the Rules Committees, regardless of these parties' proportionate overall representation within the Legislature. If 30% of the Senate are members of one party and 70% are members of another, the Gann initiative would nonetheless require that 50% of the Senate Rules Committee come from each. This requirement clearly undercuts the people's right to effectuation of their vote. It also freezes out third party representatives altogether. The potential negative impact of such a requirement is particularly important given the tremendous control that the Rules Committees have over procedural matters.

Third, the partisan theme of the Gann initiative, specifically the requirements that members of the various Senate, Assembly and Joint committees be selected by the party caucuses, encourages polarization along party lines. Moderates who do not toe the party line are subject to immediate punishment. The

party caucus will remove or withhold them from membership on desirable committees. This power in the caucuses cannot help but decrease the ability of moderates to address individual issues independently of their party's platform and to move from one side to the other according to the merits of particular proposed legislation. Measures of concern to women are often passed by moderate vote and compromise -- both Democrats and Republicans agreeing on social good. When there is block voting, important social measures -- of great interest to women -- are not passed.

Finally, the overall effect of the numerous new procedural steps that the Gann initiative would impose -- particularly votes of the Rules Committees on numerous detailed decisions -- is likely to make the Legislature a less efficient entity and weaken its influence vis-a-vis the Executive branch, which has the institutional advantage of ultimate decisionmaking by a single individual. Ours is a delicate structure of checks and balances among the three branches of government. CWL has long been concerned about any diminishment in the power of the Legislature. We look to the Legislature to pay attention to women's issues. We look to the female as well as male representatives in the Legislature and on legislative committees to address these concerns. We seek to preserve the openness now existing in the Legislature to introduce measures of concern to women and to have a forum for dialogue on key measures. One feature of our governmental structure that enhances this effort is that legislative members more than any other branch of govern-

ment are in contact with their constituents. The Gann initiative's potential effect on the balance of power between the legislative and executive branches, though indirect, should not be disregarded or taken lightly.

REMARKS BY CTA EXECUTIVE DIRECTOR RALPH FLYNN BEFORE A JOINT HEARING OF THE SENATE AND ASSEMBLY JUDICIARY COMMITTEE

M. CHAIR AND MEMBERS OF THE COMMITTEE:

IT MIGHT AT FIRST SEEM STRANGE THAT A REPRESENTATIVE OF THE CALIFORNIA TEACHERS ASSOCIATION IS HERE TO ADDRESS YOU ON PROPOSITION 24, THE GANN INITIATIVE THAT WOULD SIGNIFICANTLY AFFECT THE OPERATIONS OF THE STATE LEGISLATURE.

BUT I AM HERE TODAY BECAUSE WHAT AFFECTS THE LEGISLATURE ULTIMATELY AFFECTS OUR PUBLIC SCHOOLS, OUR PUBLIC SCHOOL STUDENTS, AND OUR PUBLIC SCHOOL TEACHERS, PARTICULARLY NOW WHEN 80% OF CALIFORNIA EDUCATION FUNDING DERIVES DIRECTLY FROM SACRAMENTO.

THE POSITION OF THE CALIFORNIA TEACHERS ASSOCIATION ON THIS ISSUE IS CLEAR AND SIMPLE: WE OPPOSE IT. THE REASONS ARE MORE COMPLEX.

ON A PHILOSOPHICAL LEVEL, WE OPPOSE THE PURPORTED REFORM BECAUSE IT WOULD VIOLATE AN IMPORTANT CANON OF OUR GOVERNMENTAL SYSTEM--THE CONCEPT OF MAJORITY RULE. UNDER THE GUISE OF GIVING A SECONDARY PARTY A GREATER SAY IN LEGISLATIVE MATTERS, THE GANN INITIATIVE WOULD ACTUALLY GIVE THE SMALLER PARTY THE POWER TO BLOCK DECISIONS MADE BY A MAJORITY VOTE. THE TYRANNY OF THE FEW WOULD BE THE ORDER OF THE DAY IF PROPOSITION 24 WERE TO BECOME LAW, AND THE TYRANNY OF THE FEW WOULD REPLACE THAT FUNDAMENTAL PRINCIPLE OF MAJORITY RULE.

OUR ENTIRE WAY OF DOING GOVERNMENT BUSINESS REVOLVES AROUND THE PREMISE THAT A MAJORITY SHOULD HAVE THE RIGHT TO MAKE THE MOST IMPORTANT DECISIONS. BUT PROPOSITION 24 WOULD ALSO SUBSTITUTE PROPORTIONALITY FOR MAJORITY RULE IN ISSUES RELATING TO LEGISLATIVE BUDGETING AND RULES SETTING.

WHEN THE NOMINEE OF ONE NATIONAL PARTY IS ELECTED PRESIDENT OF THE UNITED STATES BY A MAJORITY OF THE VOTERS, EVEN IF JUST BY A SMALL MARGIN, HE OR SHE BECOMES PRESIDENT. NO ONE SUGGESTS THAT THE COUNTRY OUGHT TO BE SPLIT UP PROPORTIONALLY, WITH THE RUNNER-UP PARTY BEING GIVEN THE RIGHT TO DECLARE ITS CANDIDATE PRESIDENT OVER ITS PROPORTIONAL SHARE.

YET THE GANN INITIATIVE WOULD DO SOMETHING SIMILAR, ESTABLISHING A PROPORTIONAL DISTRIBUTION OF POWER AND RESOURCES, CONTRARY TO MAJORITY RULE. AND WORSE, IT WOULD LIMIT THE POWER OF THE MAJORITY TO MAKE THE RULES AND SET THE PROCEDURES FOR THE LEGISLATURE. IT WOULD GIVE THE SECONDARY PARTY THE POWER NOT ONLY TO BLOCK THE PROCESS, BUT ALSO THROUGH CAUCUS POLITICS TO APPOINT MEMBERS TO THE POWERFUL RULES COMMITTEES. WHILE CURRENT PROCEDURE REQUIRES RATIFICATION OF THESE MEMBERS ON THE ASSEMBLY SIDE AND A DIRECT VOTE ON THE SENATE SIDE, PROPOSITION 24 WOULD PUT BOTH OF THESE DECISIONS IN THE HANDS OF THE CAUCUSES.

PROPOSITION 24, BY GIVING TO PARTISAN CAUCUSES RATIFICATION OR ELECTION POWERS NOW RESIDING IN THE BODIES AS WHOLES, WOULD DRIVE IMPORTANT DECISION MAKING PROCESSES BACK OUT OF THE OPEN AND BEHIND CLOSED DOORS. WE HAVE COME FAR FROM THE SMOKE-FILLED ROOMS--BUT GANN WOULD TAKE US BACK YEARS BY REMOVING THESE IMPORTANT DECISIONS FROM THE HANDS OF THE MAJORITY VOTING IN PUBLIC.

WE STRONGLY OPPOSE THIS SUBSTITUTION OF BACK-ROOM POLITICAL GAMESMANSHIP FOR THE PRINCIPLE OF MAJORITY RULE, ESPECIALLY WHERE THE BODY IN QUESTION HAS THE POWER TO MAKE DECISIONS AFFECTING THE EDUCATION OF OUR MOST PRECIOUS NATURAL RESOURCES, OUR STUDENTS, THE WORKING LIVES OF THE MORE THAN 230,000 TEACHERS WE REPRESENT, AND THE LIVES OF EACH AND EVERY RESIDENT OF THE STATE.

NOT ONLY WOULD PROPOSITION 24 WEAKEN THE PRINCIPLE OF MAJORITY RULE, IT WOULD ALSO POTENTIALLY DISENFRANCHISE FROM THE POWERFUL RULES COMMITTEES ANY VOTERS WHO HAD PUT INTO OFFICE A REPRESENTATIVE WHO IS NOT A MEMBER OF THE TWO MAJOR PARTIES. BECAUSE, UNDER GANN, THESE APPOINTMENTS WOULD BE MADE BY THE POLITICAL PARTIES INDEPENDENTLY AND WITHOUT CHECK, SUCH AN INDEPENDENT OR THIRD PARTY MEMBER WOULD HAVE VIRTUALLY NO CHANCE OF SECURING ONE OF THESE IMPORTANT AND POWERFUL POSITIONS.

BECAUSE OF THE POWER OF THE RULES COMMITTEES TO AFFECT THE FATES OF BILLS, THIS WOULD SUGGEST SUCH A REPRESENTATIVE'S CONSTITUENTS MIGHT FIND THEIR INTERESTS LESS PROTECTED.

EQUALLY TELLING IS THE EFFECT ON OUR SYSTEM OF CHECKS AND BALANCES THAT PROPOSITION 24 WOULD HAVE. OUR STATE CONSTITUTION CONCENTRATES A GREAT DEAL OF POWER IN THE EXECUTIVE BRANCH, AND MORE PRECISELY, IN THE GOVERNOR. BUT THE SYSTEM ALSO PROVIDES THE JUDICIARY AND THE LEGISLATIVE BRANCHES WITH POWER TO KEEP THE GOVERNOR IN BALANCE.

GANN COULD SIGNIFICANTLY CHANGE THIS BALANCE OF POWER BY SEVERELY LIMITING THE ABILITY OF THE LEGISLATURE TO REVIEW THE GOVERNOR'S PROPOSALS. THIS WOULD OCCUR THROUGH THE CUTBACK OF STAFFING AND FUNDING THAT THE PROPOSITION WOULD PURPORTEDLY BRING ABOUT. IN SO DOING, PROPOSITION 24 WOULD HAMPER THE LEGISLATURE'S ABILITY TO PERFORM ITS CONSTITUTIONAL DUTIES.

LET'S NOT FORGET THE PROPOSITION'S ATTEMPT TO CUT STAFFING AND FUNDING BY FIAT REPRESENTS THE WORST KIND OF FISCAL MANAGEMENT. IT REFLECTS THE DECISION TO MAKE CUTS WITHOUT FIRST ASSESSING THE IMPACT OF THOSE CUTS. ANY HOMEMAKER COULD CUT A

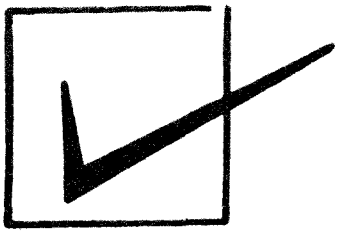
FOOD BUDGET BY 25%--ESPECIALLY IF HE OR SHE IGNORED THE FACT IT WOULD REQUIRE THE FAMILY TO GIVE UP EATING FOR ONE WEEK PER MONTH.

AS I NOTED AT THE OUTSET OF MY REMARKS, THE ISSUE OF PROPOSITION 24 IS CRITICALLY IMPORTANT TO OUR SCHOOLS BECAUSE OF THE IMPORTANT ROLE THE LEGISLATURE PLAYS IN ALLOCATING FUNDING. EDUCATION IS THE SINGLE LARGEST ELEMENT OF THE STATE BUDGET, REPRESENTING APPROXIMATELY 40%. THAT BUDGET PROCESS REQUIRES GIVE AND TAKE AS EQUALS BETWEEN THE GOVERNOR AND THE LEGISLATIVE BRANCH.

OUR PUBLIC SCHOOLS HAVE A GREAT DEAL TO LOSE IF PROPOSITION 24'S PROVISIONS SHOULD BECOME LAW, AND SO DOES THE HERITAGE OF MAJORITY RULE THAT HAS BEEN THE BASIS OF OUR REPRESENTATIVE FORM OF GOVERNMENT.

-30-

EXHIBIT A



BALLOT '84

Analysis of Proposition 24

Legislature: Rules, Procedures, Powers, Funding. Initiative Statute

Summary of Key Provisions

Proposition 24 would make significant structural, procedural, and budgetary changes in the California State Legislature. Specifically, the initiative would:

- Restructure the composition and authority of the Senate, Assembly, and Joint Rules Committees and require a two-thirds vote for all major decisions.
- Require committee assignments to be made by the party caucuses and require that committee seats be apportioned to reflect the partisan composition of the house.
- Require all legislative funds, staff, and other resources to be allocated on a proportional partisan basis.
- Require each house to adopt its rules by a two-thirds vote and would codify rules regarding conference committees and voting procedures.
- Reduce all funds appropriated for the support of the Legislature by an amount equal to 30% of the 1983-84 appropriations.
- Freeze all subsequent budgets at the 1984-85 level, adjusted only by increases or decreases in the State General Fund.

Senate Office of Research • 1100 J Street, Suite 650 • Sacramento, California 95814 • (916) 445-1727

Analysis of Impact

Proposition 24 would have a direct effect on the General Fund through the 30% reduction in the Legislature's budget. Legislative Analyst has estimated the reduction will result in a savings to the General Fund of approximately $37 million in F.Y. 1984-85.

The substantive impact on the structure and operations of the Legislature is, of course, subject to debate among the proponents and opponents of the measure. But it is likely that the mandatory partisan disbursement of legislative funds, staff, committee assignments, and other resources would increase the power of the party caucuses within the Legislature. Concurrently, the dispersion of centralized authority and diminution of the authority and power of legislative leaders would contribute to the enhancement of caucus power.

Support/ Opposition

Proposition 24 is sponsored by Paul Gann, and is popularly known as the Gann Initiative. The measure is also supported by Robert W. Naylor, the Assembly Republican Floor Leader, who has stated that several members of his caucus participated in the drafting of the Initiative. The principle committee opposing the measure is chaired by the last Republican Speaker of the Assembly, Robert Monagan. The Initiative is also opposed by the Democratic leadership of the Legislature.

Proponents argue that Proposition 24 is necessary to insure fair allocation of legislative funds, staff, and other resources; to reduce the concentration of power in the Speaker and, to a lesser degree, the President pro Tempore of the Senate; to correct abuses in legislative voting practices and the public notice of legislative hearings and expenditures; and to control unjustified increases in legislative spending.

Opponents argue that the Initiative would give disproportionate and unjustified power to legislative minorities; that many of the reforms are simply restatements of existing law and legislative rules; that legislative

spending has not increased disproportionately to the State General Fund; and that the measure is less an attempt to reform the Legislature as an effort by Republicans to gain the power they have failed to win at the ballot box.

EXHIBIT B

KEENE'S GANN IN A NUTSHELL

I. Questions about assumptions

   A. Excessive spending?

   B. Partisan domination?

II. Constitutional questions

   A. Reduced funding v.

      1. Constitutional power to set rules and procedures

      2. Separation of powers

   B. Proposes rules not statute or constitutional amendments

III. Policy questions

   A. Is minority veto consensus-defeating?

   B. Is partisanship increased?

   C. Does government become more or less open?

   D. Is power transferred elsewhere (i.e., courts, executive branch, bureaucracy, vested interests)?

IV. Alleged deficiencies

   A. Misleading re-enactment of existing reforms

   B. Phantom spending cut

   C. Disenfranchisement of independents or third party

EXHIBIT C

PREAMBLE TO PROPOSITION 24 (included at the request of Assembly Member Mountjoy)

(a) All citizens of the State are entitled to full and effective representation by their elected representatives.

(b) In recent years spending for the support of the Legislature has increased at a rate greatly exceeding the growth in spending for most other state functions, severely damaging the image and credibility of the Legislature with the people of California.

(c) In the absence of reasonable oversight and constraints, powerful individual lawmakers exercise virtually exclusive control over legislative spending, depriving the people of California and other lawmakers of an effective means of discovering how these monies are being spent or of judging the propriety of those expenditures.

(d) The distribution of funding, staff, and informational resources in the Legislature according to predominantly partisan criteria has greatly hindered the ability of minority party representatives to provide effective legislative representation.

(e) The concentration of power in the office of Speaker of the Assembly and, to a lesser extent, in the office of President pro Tempore of the Senate, has created a system of patronage and punishment through which a single legislator, accountable only to the people of a single legislative district, is able to wield greatly disproportionate influence over the laws of California.

(f) The growth in abusive voting practices in the Legislature and its committees has worked to deprive the people of their right to monitor the performance of their legislative representatives and respond accordingly.

(g) The Legislature's refusal to adhere to statutory and traditional notice and publication requirements for committee hearings and reports of conference committees has deprived the public of its right to make effective input into the legislative process.

1515 K Street, Suite 600
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EXHIBIT D

3580 Wilshire Boulevard, Suite 800
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(213) 736-2273

State of California

Office of the Attorney General

John K. Van de Kamp
Attorney General

May 2, 1984

Hon. Barry Keene
Chairman
Senate Judiciary Committee
State Capitol, Room 2032
Sacramento, California

RECEIVED
MAY - 3 1984

Hon. Elihu M. Harris
Chairman
Assembly Judiciary Committee
State Capitol, Room 6031
Sacramento, California

Dear Senator Keene and Assemblyman Harris:

Pursuant to your request I offer these comments on the proposed Legislative Reform Act of 1983, the statutory initiative measure which will appear as Proposition 24 on the June primary election ballot.

As you are aware I coauthored a part of the argument against Proposition 24 appearing in the official ballot pamphlet. My opposition represents my personal dissatisfaction with the measure on policy grounds; in the ballot argument I referred to the legal barriers the measure will have to hurdle if it passes.

You have requested my legal view of the measure. In this regard the legal issues are quite clear. The answers are not.

The proposed statutory initiative would do two things. First, it would alter the parliamentary rules governing the conduct of legislative business. Second, it would limit the amount the Legislature could expend on legislative business.

With respect to the first issue, the change in parliamentary rules, the proposed initiative would require that all such rules be adopted by two-thirds vote. This type of requirement, often called a "super majority," traditionally accords small factional interest groups power that is considerably disproportionate to their size.

Parliamentary rules are the heart of the legislative process and the power to adopt such rules is expressly conferred on the Legislature by the California Constitution. Article IV, section 7(a) of the California Constitution provides that each house of the Legislature "shall choose its officers and adopt rules for its proceedings." For the most part, California's Legislature, as in other states and Congress, has for over 100 years adopted its parliamentary rules by majority vote of its members.

The California Constitution authorizes the people to adopt "statutes and amendments to the constitution". (Calif. Const. Art. II, Sec. 8). While there is little doubt that the people, through the initiative process, could amend their Constitution to require the Legislature to adopt its rules by two-thirds vote, Proposition 24 does not tender the people a constitutional initiative but a statutory initiative.

As you may know, a situation very similar to that posed by Proposition 24 arose in Massachusetts. The Supreme Court of Massachusetts held that the people had no power under the initiative process to enact rules for the Legislature under the guise of proposed statutory amendments. Paisner v. Attorney General.

While the law of Massachusetts is in no way binding on the courts of this state, the proposition that constitutional powers can only be extinguished or modified by constitutional amendments is not unique. It is my view that those portions of Proposition 24 which purport to impinge on the rule making authority of the Legislature are susceptible to constitutional challenge and may well be invalidated on the same theory as similar provisions were invalidated in Massachusetts.

With respect to the other aspect of Proposition 24, that which seeks to limit the amount which may be expended by the Legislature on legislative business, it is questionable whether an initiative statutory enactment can circumscribe the power of the Legislature to appropriate funds for its own support. Clearly a constitutional amendment can impose limitations. The appropriation limitations contained in Article XIII B are an example of limitations imposed through an initiative constitutional amendment.

At the heart of this issue is the question of who, constitutionally, is accorded the discretion to determine the level of funding essential to the conduct of legislative

business. Can the people by statutory initiative totally deprive the Legislature of operating funds? If so could the people similarly deprive the courts of operating funds? Does the fact that Proposition 24 would merely limit, not eliminate, legislative funding render it valid?

Existing legal authorities provide little guidance on this issue. It is a new issue that, ultimately, can only be resolved by the courts. It is interesting to note, however, that in the Paisner case the Massachusetts Supreme Court invalidated the entire initiative measure, notwithstanding a severability clause and notwithstanding the fact that some of the initiative's provisions were undoubtedly the proper subject of the initiative power. Whether the California courts would follow the same route, irrespective of whether the appropriation limitations are or are not the proper subject of a statutory initiative, is uncertain.

Very truly yours,

JOHN K. VAN DE KAMP
Attorney General

ac

EXHIBIT E

Joint Legislative Budget Committee

GOVERNMENT CODE SECTIONS 9140-9143

California Legislature

925 L STREET, SUITE 650
SACRAMENTO, CALIFORNIA 95814
(916) 445-4656

May 2, 1984

Hon. Barry Keene, Chairman
Senate Judiciary Committee

Hon. Elihu M. Harris, Chairman
Assembly Judiciary Committee

Dear Chairmen:

You have asked us to respond to a series of questions concerning state finances and the Gann Initiative, which is Proposition 24 on the June 1984 ballot. This letter contains our responses.

1. Over the last 16 years (1967-68 to 1983-84), what has been the growth in legislative expenditures compared to those for the Governor's office and compared to total state General Fund expenditures?

Response: Table 1 and Chart 1 show that:

- Total General Fund expenditures increased by 592 percent over this 16 year period.
- Legislative expenditures increased by a slightly smaller percentage--namely 583 percent.
- By contrast, expenditures for the Governor's office increased by 776 percent.

The definition of legislative expenditures reflected in these displays is that used by the Gann Initiative. It includes not only the Assembly, Senate, and Joint expenses, but also the expenses of the Legislative Counsel, the California Law Revision Commission, and the Commission on Uniform State Laws.

Expenditures by the Governor's office include spending by the following entities, which are listed in the budget as part of the Governor's office.

Budget Code Number	Component
0500	Governor's Office
0560	Office for Citizen Initiative and Voluntary Action
0565	California Commission on Industrial Innovation
0570	Governor's Council on Wellness and Physical Fitness
0580	Office of California-Mexico Affairs
0585	California State World Trade Commission
0630	Governor's Office of Special Health Care Negotiations
0650	Office of Planning and Research
0660	Office of Economic Opportunity
0690	Office of Emergency Services

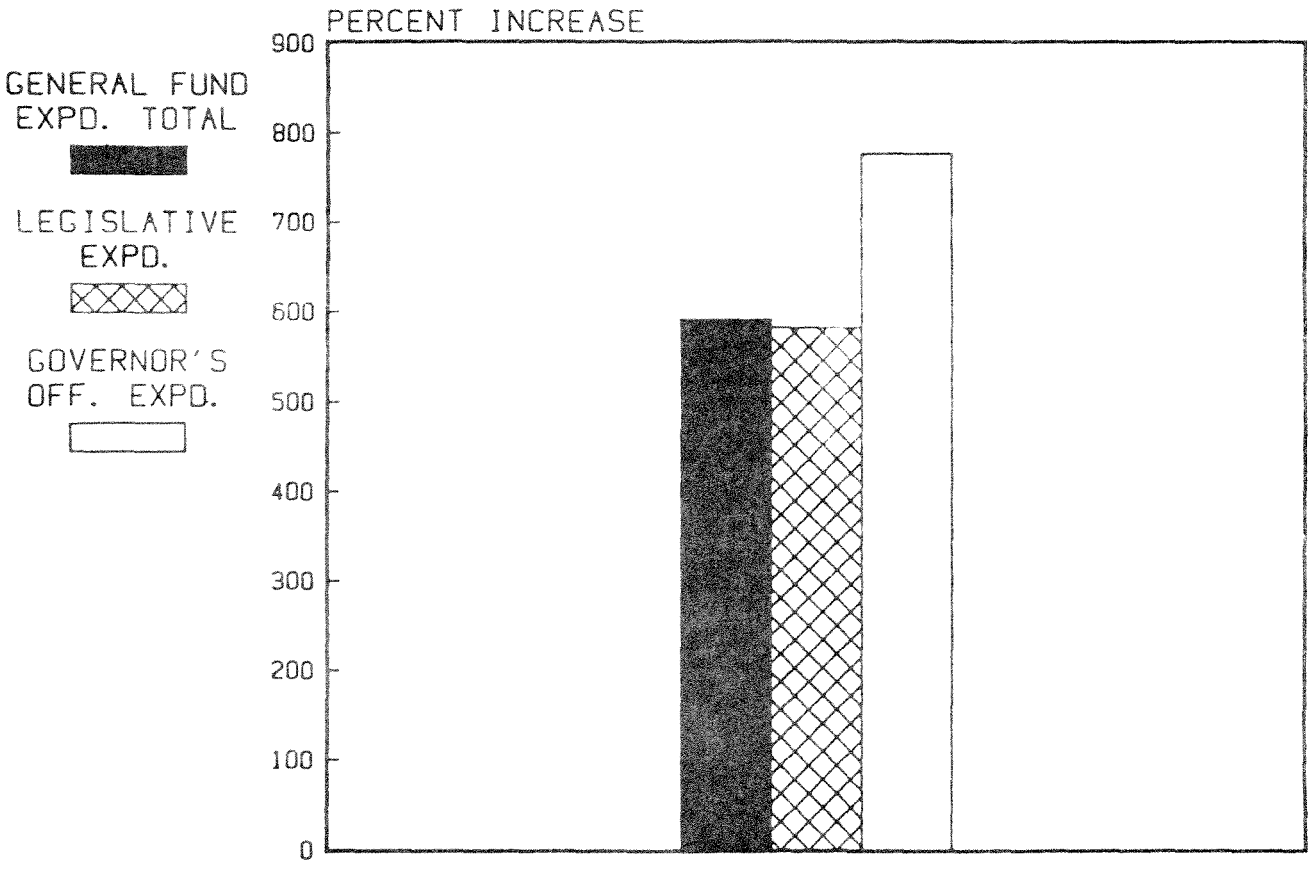
Table 1

Expenditures by the Governor's Office, the Legislature, and State's General Fund, 1967-68 to 1983-84

Fiscal Year	Total General Fund Expenditures (millions)	Legislative Expenditures		Governor's Office Expenditures	
		Amount (thousands)	As Percent of Total Expenditures	Amount (thousands)	As Percent of Total Expenditures
1967-68	$3,273	$19,291	0.59%	$3,022	0.09%
1968-69	3,909	21,005	0.54	3,227	0.08
1969-70	4,456	24,503	0.55	3,270	0.07
1970-71	4,854	27,285	0.56	3,171	0.07
1971-72	5,027	32,530	0.65	3,486	0.07
1972-73	5,616	33,617	0.60	4,303	0.08
1973-74	7,302	43,019	0.59	8,421	0.12
1974-75	8,325	47,720	0.57	10,996	0.13
1975-76	9,517	52,962	0.56	11,360	0.12
1976-77	10,488	54,879	0.52	10,987	0.10
1977-78	11,708	62,071	0.53	12,529	0.11
1978-79	16,272	60,014	0.37	14,030	0.09
1979-80	18,568	72,846	0.39	14,810	0.08
1980-81	21,066	87,491	0.42	16,464	0.08
1981-82	21,695	112,171	0.52	19,508	0.09
1982-83	21,755	108,454	0.50	22,262	0.10
1983-84	22,641	131,695	0.58	26,459	0.12
Percent Change 1967-68 to 1983-84	592%	583%		776%	

CHART I

INCREASES IN SELECTED STATE EXPENDITURES: 1967-68 TO 1983-84



2. Legislative expenditures constitute what portion of total state General Fund expenditures? How has this ratio changed over the last 16 years?

Response: The Legislature accounts for less than 1 percent of total state General Fund expenditures. Sixteen years ago, legislative expenditures amounted to 59/100 of 1 percent of total expenditures; today, the ratio is almost exactly the same--58/100 of 1 percent. Over this 16 year period, this ratio has ranged from a high of 65/100 of 1 percent in 1971-72, to a low of 37/100 of 1 percent in 1978-79.

There are two reasons why the ratio was so low in 1978-79: (1) in response to Proposition 13, the Legislature increased state General Fund expenditures by $4.5 billion in order to provide fiscal relief to cities, counties, school districts, and special districts, and (2) in the same year, the Legislature reduced its own expenditures by $2 million (see Table 1).

3. The expenditures of the Governor's office constitute what portion of total state General Fund expenditures, and how has this ratio changed over the last 16 years?

Response: Sixteen years ago the Governor's office accounted for 9/100 of 1 percent of total state General Fund expenditures. The percentage dropped to 7/100 of 1 percent in 1969-70, increased to 13/100 of 1 percent in 1974-75, dropped back to 8/100 of 1 percent in 1979-80, and subsequently increased to 12/100 of 1 percent where it is now.

4. In the California Ballot Pamphlet, your office estimated the fiscal effects of Proposition 24. How did you compute the 1984-85 fiscal effect, and why did you estimate a General Fund savings of "up to $37 million"?

Response: Section 9934 of the Gann Initiative provides that appropriations for the Legislature in 1984-85 shall be reduced by an amount equivalent to 30 percent of appropriations for the support of the Legislature in 1983-84. The first step we took in calculating the size of the required reduction was to ascertain the current year appropriation base. Our estimate of the base coincides with the amounts shown for the Legislature in Schedule 9 of the Governor's proposed budget, with one significant exception. On the advice of the Legislative Counsel's office, we excluded spending authority granted prior to 1983-84. This yields an appropriation base in 1983-84 for purposes of the Gann Initiative that is equal to $123,485,000. The appropriation base is $8.2 million less than the level of expenditures cited in Table 1 because carry-over funds are being used to finance a portion of 1983-84 expenditures.

Thirty percent of $123,485,000 is about $37 million. This is the maximum size of the reduction in legislative support appropriations that the Gann Initiative would require in 1984-85.

In preparing our analysis of the Gann Initiative for the California Ballot Pamphlet, we estimated the required cut as being "up to $37 million," rather than approximately $37 million. This is because we cannot be certain at this time that all of the appropriations cited in Table 2 are for the direct "support of the Legislature." For example:

a. About $3 million, or 40 percent, of the Auditor General's budget for 1983-84 is being spent for fiscal audits. The primary purposes of these audits, which are required by statute, are to: (1) ascertain the fiscal condition of the state, and (2) determine whether the state is complying with federal guidelines in its use of federal grant funds. The continued receipt of federal funds is contingent upon the performance of these audits. A strong argument can be made that this type of activity is conducted on behalf of state government generally, rather than in "support of the Legislature."

b. The Legislature's budget for 1983-84 contains $6.3 million for legislative printing. However, executive departments and the general public use the bills, histories, files, and journals which are funded out of this appropriation. A strong argument can be made that only a portion of these printing costs represent direct "support of the Legislature."

c. The Legislative Counsel Bureau drafts bills for executive departments, assists the Governor's office in connection with action on enrolled bills, and provides other services which are not strictly for the "support of the Legislature." Thus, a strong argument can be made that a portion of funding for this office should not be included in the Legislature's appropriation base under the Gann limit.

Table 2

Components of the Legislature's Maximum 1983-84 Appropriation Base,[a] as Defined by the Gann Initiative (in thousands)

Assembly	$50,077
Senate	32,107
Joint Expenses	23,036
Auditor General	(7,568)
Legislative Analyst	(4,730)
Legislative printing	(6,354)
Revising penal code	(182)
Other joint expenses	(4,202)
Contributions to the Legislator's Retirement Fund	670
Legislative Counsel Office	17,124[b]
California Law Revision Commission	420
Commission on Uniform State Laws	51
Total	$123,485[c]

a. Excludes $7,674,000 of special fund expenditures, and $554,000 of General Fund joint printing expenses because both will be funded out of prior year appropriations.
b. The Legislative Counsel's budget indicates $17,000 of unidentified savings. Because Proposition 24 is an appropriation limit, these savings were disregarded when calculating the limit and as a result the figure in this table is $17,000 higher than the one shown in Schedule 9.
c. An unknown portion of these appropriations may not be for the direct support of the Legislature. As a result, this total represents the maximum potential base on which the 30 percent reduction would be calculated.

Unfortunately, proposition 24 does not define the key term "expenditures in support of the legislature." Without knowing how this phrase would be interpreted, the best estimate we could make of the cut that would be required was "up to $37 million."

Sincerely,

William G. Hamm

William G.Hamm
Legislative Analyst

SUPPLEMENTAL STATEMENT OF
ROBERT C. POST
BEFORE A JOINT HEARING OF THE
SENATE AND ASSEMBLY JUDICIARY COMMITTEES

During my testimony before the Senate and Assembly Judiciary Committees on May 4, 1984, I was requested by Senator Ollie Speraw to supplement my remarks by reaching conclusions respecting the constitutionality of specific provisions of the Gann Initiative. Chairman Keene indicated that he would keep the record open to receive this supplemental analysis.

I subsequently received a letter from Marilyn R. Riley, counsel to the Senate Judiciary Committee, asking me on behalf of Senator Speraw to "analyze each section of Proposition 24 to determine its constitutionality," with particular attention to "the effect of Section 9906, the severability clause."

Senator Speraw's request would strain the resources of a large law firm, and it certainly raises issues that transcend the meagre resources presently available to me. Nevertheless, I will in this supplemental statement do my best to shed what light I can on these issues.

I. THE GANN INITIATIVE: ARTICLE 2.

In my original testimony I concluded that the California Constitution was inconsistent with those aspects of the Gann Initiative which impaired the ability of either house of the legislature to adopt rules for its internal proceedings or to select committees necessary for the conduct of its business.

It follows from this conclusion that Article 2 of the Gann

Initiative is unconstitutional.

A. Sections 9910, 9913, 9914.

Sections 9910 and 9914 of the Initiative create the offices of the Speaker of the Assembly and the President pro tempore of the Senate. Each office is charged with the "efficient conduct of the legislative and administrative affairs" of its respective house. Section 9913 subjects appointments made by the Speaker "to confirmation by the Assembly Committee on Rules."

The offices of Speaker and President pro tempore, together with the duties of those offices respecting the internal proceedings of the legislature, have traditionally been a matter of the internal rules of the California legislature.[1] The appointment power of the Speaker, for example, has been defined by Assembly Rules since 1850.[2]

Since Sections 9910, 9913 and 9914 impair the ability of the Senate and the Assembly to structure their internal proceedings by depriving them of the ability to enact rules inconsistent with these Sections, they are unconstitutional.[3]

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1 See Assembly Rules 11-15 (1867); Assembly Rules 19-23 (1911); Assembly Rules 3, 26 (1983); Senate Rule XLV (1854); Senate Rules 2, 4-7, 9 (1911); Senate Rules 2, 6, 7, 8 (1966); Senate Rules 2, 6, 7, 8 (1983).

2 See Assembly Rule 7 (1850); Assembly Rule 20 (1867); Assembly Rule 28 (1911); Assembly Rules 12, 26(e) (1983).

3 The language of Section 9910 closely tracks that of Section 9220 in the present Government Code. At pages 6 to 9 of my original testimony, however, I discuss why statutes governing internal proceedings may be constitutional when enacted by the legislature, but not when enacted by the electors as a statutory initiative.

B. Sections 9911, 9912, 9915, 9916, 9917.

Sections 9911 and 9915 create in the Assembly and the Senate a Committee on Rules and provide for the selection and partisan composition of the membership of these committees. Sections 9912 and 9916 set out the powers and internal procedures of these committees. Section 9917 contains similar provisions with respect to a "Joint Rules Commitee."

The creation of standing committees, the selection of their membership, the internal procedures by which they are to be governed, are all traditionally matters governed by internal legislative rules.[4] The constitutional power of each house of the legislature to govern these matters is specifically recognized and authorized by Section 11 of Article IV of the state Constitution, which declares that "either house" of the legislature "may by resolution provide for the selection of committees necessary for the conduct of its business." Sections 9911, 9912, 9915, 9916, and 9917 of the Gann Initiative directly and obviously impair this constitutional power, and for that reason are unconstitutional.

II. THE GANN INITIATIVE: ARTICLE 3.

Sections 9920, 9921, 9922, 9923, 9924 and 9925 of the Initiative deal explicitly with matters of internal legislative

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[4] See Assembly Rules 7, 60-74 (1850); Assembly Rules 19-34 (1867); Assembly Rules 27-34 (1911); Assembly Rules 11-16, 20, 26(e) (1983); Senate Rules XVI, XXIV; Senate Rules 7, 8 (1911); Senate Rules 11-13.1, 13.8-16 (1983); Joint Rules 36-37, 40-40.2 (1965); Temporary Joint Rules 36-43 (1983).

rulemaking, as well as with how committees are to be established and their members selected. For the reasons previously discussed, these provisions are unconstitutional.

The remainder of Article 3 essentially recodifies the present Grunsky-Burton Open Meeting Act. Analysis of these provisions is complicated by Section 7(c) of Article IV of the state Constitution, which provides:

> The proceedings of each house and the committees thereof shall be public except as provided by statute or by concurrent resolution, when such resolution is adopted by a two-thirds vote of the members of each house, provided, that if there is a conflict between such statute and concurrent resolution, the last adopted shall prevail.

Since the Gann Initiative cannot be amended except "by statute, passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring and signed by the Governor," the open meeting provisions of the Initiative deprive the legislature of its constitutional power to meet secretly when it chooses to do so by concurrent resolution. For this reason the provisions are unconstitutional.[5]

III. THE GANN INITIATIVE: ARTICLE 4.

Article 4 of the Initiative deals with legislative funding and its administration. It raises difficult and far-ranging issues of law. Resolution of these issues is for the most part beyond the scope of the time and information available to me. But I will try to be as specific as I can, and, where appropriate, I will try to isolate pertinent questions of fact and law.

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[5] As discussed in note 3, supra, a statute can be constitutional when enacted by the legislature, but unconstituitonal when enacted by the electors as an initiative statute.

A. Sections 9930, 9931, 9932, and 9933.

Section 9930 creates contingent funds to meet legislative expenses. It would appear that neither house can unicamerally create such funds, and that they therefore must be established by statute. This aspect of Section 9930 would thus be constitutional.

Section 9930, however, goes on to provide that disbursements from these funds shall be made by the appropriate "Committee on Rules in accordance with the provisions of this chapter." Section 9931 provides that disbursements from the Senate and Assembly contingent funds "shall be divided proportionately according to the partisan composition of the house in question" except "as provided by affirmative recorded vote of two-thirds of the membership" of the appropriate rules committee. Section 9932 provides that all disbursements from the Contingent Fund of the Senate and Assembly be made by a two-thirds vote of the Joint Rules Committee; and Section 9933 provides that money appropriated for legislative printing be disbursed "as provided in the rules of the Senate or Assembly or their joint rules."

In recent times, the disbursement of legislative funds, as opposed to the creation of funding accounts in the treasury, has been a "managerial" function connected to the internal proceedings of the legislature.[6] For this reason such disbursements have been governed by the internal rules of each

[6] 14 Op. Atty. Gen. 280, 286 (1949).

house. Thus Sections 9126 and 9127 of the present Government Code, enacted in 1949, provide that the Assembly and Senate contingent funds "shall be disbursed . . . as provided in the rules, orders, and resolutions" of each house.[7] The Gann Initiative itself recognizes that such disbursements are primarily a matter of the internal proceedings of each house, and the Initiative accordingly attempts to create the internal rules by which such disbursements will occur. I would conclude, therefore, that those provisions of the Initiative impairing the ability of each house to govern its own disbursements are unconstitutional.

B. Sections 9935, 9936, and 9937.

Section 9935 concerns the technical accounting matters associated with the initial creation of the contingent funds. For the reasons given in the first paragraph of Section III(A), supra, I believe it to be constitutional.

Sections 9936 and 9937 impose certain accounting and reporting duties on specific legislative committees. On the one hand, these provisions constrain the legislature's power to select such committees as it chooses, and to distribute duties and responsibilities to those committees. On the other hand, the duties created by these provisions seem to concern public accountability rather than internal procedures.

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[7] As far as I have been able to discern, these sections codified pre-existing practice. See, e.g., Senate Rules 12, 37 (1911). More research remains to be done on this question, however, including inquiry into the practices of other states and legislative bodies.

The constitutionality of these provisions, therefore, is a difficult issue. At this time I do not have the resources to resolve it.

C. Section 9934.

Section 9934 requires a thirty per cent reduction in legislative appropriations. It does not address the internal proceedings of the legislature, and it therefore does not raise the issues discussed in my previous testimony.

Section 9934, however, does pose two further questions. One concerns the principle of the separation of powers; the other that of severability.

1. Separation of Powers.

The principle of separation of powers is located in Section 3 of Article III of the state Constitution. The essence of the principle is that the people have established distinct branches of government --legislative, judicial, and executive-- in the hope that these branches may check and balance each other. The underlying theory is that power unchecked will swell into tyranny, and that government power can only be checked by the creation of countervailing centers of power.

Consistent with this principle, constitutional questions would be raised if the legislature were, for example, to attempt to remove countervailing centers of power by refusing to appropriate funds for the executive or judicial branches. If the Constitution would prohibit such legislation if enacted by the legislature, it would also prohibit it if enacted by the people through a statutory initiative.

For these reasons, if the funding cuts mandated by Section 9934 were to impair the ability of the legislature to function as a co-equal branch of government, a serious constitutional question would be raised pursuant to the principle of the separation of powers.

Whether the funding cuts do so impair the legislature is a question of fact, and I do not presently have available to me the evidence necessary for its resolution. It is fair to say, however, that, given the language of the Initiative, I would view any such claim of impairment with some skepticism.

2. Severability.

If the analysis in my testimony is correct, most of the provisions of the Gann Initiative are unconstitutional. Indeed, Articles 2 through 4 of the Initiative contain 27 sections, of which 23 are in some manner unconstitutional.

This raises in its sharpest form the question of whether the Initiative will be struck down in toto. The Initiative, of course, contains a severability provision, Section 9906, which provides:

> If any provision of this chapter, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this chapter, to the extent it can be given effect, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this end the provisions of this chapter are severable.

Assuming, then, that Section 9934 is otherwise constitutional, the question is whether it will be preserved by Section 9906 despite the unconstitutionality of the vast majority of its surrounding sections.

Although courts will normally accord deference to a severability clause like Section 9906, the ultimate determination of the continued vitality of Section 9934 will turn "on whether `[it] is complete in itself and would have been adopted by the legislative body had the latter foreseen the partial invalidation of the statute' (In re Bell, (1942) 19 Cal.2d 488, 498) or `constitutes a completely operative expression of the legislative intent . . . [and is not] so connected with the rest of the statute as to be inseparable." (In re Portnoy, (1942) 21 Cal.2d 237, 242)." Santa Barbara Sch. Dist. v. Superior Court, 13 Cal.3d 315, 331 (1975).

This determination of legislative intent is particularly difficult with respect to an initiative. It is a fine question how the relevant intent of the mass of electors can be discovered. Aids to the determination of this intent include "the summary prepared by the attorney general" and "the arguments for and against the measure sent to the voters and set forth in the pamphlets accompanying the the sample ballots." Carter v. Seaboard Finance Co., 33 Cal.2d 564, 580-81 (1949). Also pertinent would be campaign literature on both sides.

I have available the Attorney General's summary, but it is not helpful in this context. I have not seen the pamphlets accompanying the sample ballots, and I do not have access to campaign literature. It is thus extremely difficult for me to reach an informed judgment on this question.

On the one hand, there does not appear to be any necessary or logical connection between Section 9934 and the rest of the

Initiative. One can envision a voter having two distinct and independent goals: (1) reducing legislative spending; and (2) restructing the internal proceedings of the legislature. Even if the second goal were found to be unconstitutional, the first could continue unabated. From this perspective, then, the severability clause should protect Section 9934.

On the other hand, the text of the Initiative reveals some interdependence between these two goals. In Section 9901(a), in what is clearly the foundation of its subsequent provisions, the Initiative "finds and declares": "All citizens of the State are entitled to full and effective representation by their elected representatives." In Section 9901(d) the Initiative declares that insufficient legislative funding can seriously impair such "full and effective representation." It finds that "the distribution of funding, staff, and informational resources in the Legislature according to predominantly partisan criteria has greatly hindered the ability of minority party representatives to provide effective legislative representation."

If the provisions of the Initiative that guarantee the minority party of the legislature a proportional share of legislative disbursements were struck down as unconstitutional,[8] and if Section 9934 were upheld, it follows that the 30% cut in legislative funding would drain the minority party of "funding, staff and informational resources" to an extent not

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[8] See Section III(A) supra.

foreseen by the authors of the Initiative.[9] This in turn would create an unexpected hindrance to the ability of minority representives to "provide effective legislative representation."

As a result the goal of "full and effective representation" would be impaired rather than furthered, and this would contradict the basic objective the Initiative in a manner that could not have been foreseen. A Court following this reasoning would probably be inclined to hold that the voters would not have wished to have Section 9934 continue in effect if the remainder of the Initiative were found invalid.

Any firm conclusion with respect to this question, however, would depend upon a detailed appreciation of the legislative history surrounding the Initiative. Since much of that history has yet to be created, and since I do not have access to such of that history as has been created, it seems premature at this time, and certainly premature for me, to attempt to resolve the issue of severability.

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[9] It is clear that the authors of the Initiative did not expect that the minority party would suffer a proportional 30% funding cut. Although Section 9901(d) is somewhat inartfully phrased, its only plausible interpretation is that minority representatives presently receive a share of legislative funding that is disproportionately small when measured against their partisan strength. Thus if disbursements were "divided proportionately according to the partisan composition of the house in question," (Section 9931), minority representatives would actually receive an increase in legislative funding. This increase would then offset the general 30% spending reduction mandated by Section 9934. If Section 9931 were found unconstitutional, however, not only would minority representatives have at a minimum to absorb a full proportional 30% cut in funding, the majority could also require them to absorb an even greater proportion of the mandated spending reduction. It is evident that these possibilities were not envisioned by the authors of the Initiative.